

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Laurence Vinocur and American Crafts, L.C.

This Settlement Agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and American Crafts, L.C. (American Crafts) with Vinocur and American Crafts collectively referred to as the “Parties” and individually as a “Party.” 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. American Crafts 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 American Crafts manufactures, imports, sells and/or distributes for sale in California, vinyl stamps 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 (DEHP is hereinafter referred to as the “Listed Chemical”).

1.3 Product Description

The products that are covered by this Settlement Agreement are vinyl stamps containing DEHP including, but not limited to, the *Imaginisce Clear Acrylic Stamp*, #400664, #1726321, UPC #8 48554 00664 8, manufactured, imported, or purchased for resale by American Crafts and distributed, sold and/or offered for sale in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about October 24, 2018, Vinocur served American Crafts, Tuesday Morning Corporation and Tuesday Morning, Inc. (collectively, Tuesday Morning), and certain requisite

public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that American Crafts 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

American Crafts 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 American Crafts 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 American Crafts 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 September 30, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Injunctive Relief

Commencing December 31, 2019, and continuing thereafter, American Crafts 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 American Crafts sells, ships for sale, or distributes for sale to customers or consumers in California, or to customers with nationwide distribution, after December 31, 2019, shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If, after December 31, 2019, American Crafts sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, American Crafts shall also

provide warnings for such Products by identifying the specific Product to which the warning applies as set forth in Sections 2.4 through 2.6.


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 December 31, 2019, and continuing thereafter, American Crafts 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 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.

(b) Short-Form Warning. American Crafts may, but is not required to, 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

(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

American Crafts 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 December 31, 2019, American Crafts prints new catalogs and sells Products via mail order through such catalogs to customers located in California, American Crafts 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 December 31, 2019, American Crafts sells Products via the internet to customers located in California, American Crafts 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. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” 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.

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, American Crafts agrees to pay a total of \$1,500.00 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.

American Crafts will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by Vinocur’s counsel on or before October 4, 2019. American Crafts shall provide two checks made payable to: (a) “OEHHA” in the amount of \$1,125.00; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$375.00. Thereafter, Vinocur’s counsel shall send OEHHA’s portion of the penalties paid by American Crafts 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, American Crafts 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, American Crafts shall reimburse Vinocur's counsel \$13,500. American Crafts will deliver its payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by Vinocur's counsel on or before October 4, 2019, 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 American Crafts' 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 Claims Covered

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, on the one hand, and (a) American Crafts, and its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns (collectively the "Releasees"), and (b) all entities to whom Releasees directly or indirectly

provide, distribute, or sell the Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including Tuesday Morning Inc., (“Downstream Releasees”), on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been, or may in the future be asserted against the Releasees and/or Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising in connection with the Products manufactured, shipped, and/or otherwise distributed prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Parties agree that compliance with the terms of this Settlement Agreement by American Crafts shall be deemed to be in compliance with Proposition 65 by Releasees and Downstream Releasees with respect to any exposures to the Listed Chemical in the Products manufactured, distributed, or sold by American Crafts after the Effective Date, including any Products that have not been sold but are already in the stream of commerce.

4.2 American Crafts’ Release of Vinocur

Except as to the obligations created by this Settlement Agreement and any related promises or agreements by and amongst the parties or their representatives relating to this Settlement Agreement, American Crafts, 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 Vincour’s Release of American Crafts

In further consideration of the promises and agreements herein contained, and except as to the obligations created by this Settlement Agreement, Vincour 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 and releases with respect to the Products all rights to

institute or participate in, directly or indirectly, any form of legal action, 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 limited to, investigation fees, expert fees, and attorneys' fees) (collectively the "Claims"), against Releasees and/or Downstream Releasees that arise under Proposition 65 or any other statutory or common law claims that were or could have been asserted with respect to any Products, including without limitation to the extent that such claims relate to Releasees' and/or Downstream Releasees' alleged exposure of persons to the Listed Chemical contained in the Products or any failure by Releasees and Downstream Releasees to warn about exposures to the Listed Chemical contained in the Products.

The Parties further understand and agree that this Section 4.3 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 American Crafts. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve American Crafts' Products.

4.4 Waiver Pursuant to Civil Code §1542

With respect to the releases made by each Party under this Agreement in Sections 4.2 and 4.3, each Party hereby fully and forever waives the application and benefits of California Civil Code section 1542 and hereby verifies that it has read and understands, with advice of legal counsel of its own choosing, the following provision of California Civil Code section 1542:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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. This Settlement Agreement shall have no application to Products which are sold to end users outside 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 American Crafts 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 American Crafts from any obligation to comply with any pertinent state or federal toxics control law.

The Parties, including their counsel, have participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. This Settlement Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel.

Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

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 American Crafts:

Bruce Gwilliam, Chief Financial Officer
American Crafts, L.C.
588 West 400 South, Suite 300
Lindon, UT 84042

With a Copy to:

Colin R. Higgins, Esq.
Snell & Wilmer L.L.P.
Plaza Tower
600 Anton Boulevard, Suite 1400
Costa Mesa, CA 92626

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.

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: 10/2/19 _____

By:  _____
Laurence Vinocur

AGREED TO:

Date: 10/24/19 _____

By:  _____
Bruce Gwilliam, CFO
American Crafts, L.C.