

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Settlement Agreement”) is entered into by and between Laurence Vinocur (“Vinocur”) and the manufacturer of the Products, as defined in Section 1.3 below, Three by Three, Inc. (“the Manufacturer”) 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. The Manufacturer 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 the Manufacturer sells and/or distributes for sale in California, vinyl magnets that contain di(2-ethylhexyl)phthalate (“DEHP”), and that it did not provide the health hazard warning that Vinocur alleges is required by Proposition 65 at the time of the Notice. 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 defined as and limited to, the *Three by Three Magnets, Item 20780, #10071376, UPC #8 39383 00257 4*, sold and/or distributed in the State of California (the “Products”).

1.4 Notice of Violation

On or about August 20, 2019, Vinocur served the Manufacturer, The Container Store, Inc., and certain requisite public enforcement agencies, with a 60-Day Notice of Violation (“Notice”) alleging that the Manufacturer 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

The Manufacturer 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 the Manufacturer 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 The Manufacturer 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 December 31, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Injunctive Relief

Commencing on or before the Effective Date and continuing thereafter, the Manufacturer shall only sell Products in California: (a) that are Reformulated Products as defined by Section 2.2; or (b) with a clear and reasonable warning as set forth in Section 2.3. If, after the Effective Date, the Manufacturer sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, the Manufacturer shall also provide warnings for such Products by identifying the specific Product to which the warning applies as set forth in Sections 2.3 through 2.4.


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

As of the Effective Date, and continuing thereafter, a clear and reasonable exposure warning as set forth in subsections 2.1 through 2.4 must be provided for all Products that the Manufacturer manufactures, imports, distributes, sells, or offers for sale in California that are not Reformulated Products. There shall be no obligation for the Manufacturer to provide a warning on the label of the Products are in the stream of commerce in the United States prior to the Effective Date, provided that a point-of-sale warning is given as set forth in subsections 2.3 and 2.4. The warning shall consist of either the Warning or Short-Form Warning described in §§ 2.3 (a) and (b), respectively:

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

 **WARNING:** This product can expose you to Di(2-ethylhexyl) phthalate (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.** The Manufacturer 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 Section 2.4, 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

The warning content set forth in Section 2.3 shall be provided using any one of the following methods:

(a) The warning shall be affixed to or printed on the Product's packaging or labeling, or on a placard, shelf tag, sign or electronic device or automatic process, provided that the warning is 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. A warning may be contained in the same section of the packaging, labeling, or instruction booklet that states other safety warnings, if any, concerning the use of the Product and shall be at least the same size as those other safety warnings.

(b) The Manufacturer may obtain the written agreement of any retailer to provide a point-of-sale warning, by notifying each retailer pursuant to 27 CCR § 25600.2(b)-(d). Such warning shall be presented in any of the following forms:

i. In-Store Sales of the Products. Customers purchasing Products directly from California retail stores will receive the Proposition 65 warnings set forth in Section 2.3 above via register purchase display and on customers' printed receipts.

ii. Internet Sales of the Products. Via an internet website to customers located in California, the warning requirements of this section shall be satisfied if one of the warnings set forth in Section 2.3 appears either: (a) on the same web page on which a Product is displayed and/or described; (b) on the same page as the price for the Product; or (c) on one or more web pages displayed to a purchaser prior to purchase during the checkout process. The Manufacturer must also provide the warning affixed to or printed on the Product's packaging or labeling for

Products manufactured after the Effective Date that are sold via the internet to customers in California.

2.5 Compliance with Warning Regulations

The Manufacturer shall be deemed to be in compliance with this Settlement Agreement by either adhering to §§ 2.3 and 2.4 of this Settlement Agreement or by complying with any revised warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") after the Effective Date.

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, the Manufacturer 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.

The Manufacturer will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number provided to Vinocur's counsel, so that payment is received by the Effective Date. The Manufacturer shall provide 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. Thereafter, Vinocur's counsel shall send OEHHA's portion of the penalties paid by the Manufacturer 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, the Manufacturer 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 Settlement Agreement, the Manufacturer shall reimburse Vinocur's counsel \$10,325. The Manufacturer will deliver its payment to the address in Section 3.3 by overnight courier, with a tracking number provided to Vinocur's counsel by December 30, 2019, such that payment is received by Vinocur's counsel on or before December 31, 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 the Manufacturer'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 The Manufacturer

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and the Manufacturer 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 the Manufacturer, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, The Container Store, Inc. and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom the Manufacturer directly or indirectly distributes or sells Products, including, but not limited to,

downstream distributors, wholesalers, customers, 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 the Manufacturer 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, on behalf of himself in the public interest but *not* on behalf of the public, 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 the Manufacturer, before the Effective Date (collectively “Claims”), against the Manufacturer and Releasees.

4.2 The Manufacturer’s Release of Vinocur

The Manufacturer, 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. RIGHT TO CURE

No action to enforce this Settlement Agreement may be brought against the Manufacturer by Vinocur, unless Vinocur first provides the Manufacturer with written notice indicating the specific acts alleged to breach this Settlement Agreement (“Notice of Breach”). Any Notice of Breach must contain (a) one or more photos that clearly identify the Product at issue; (b) a copy

of the purchase receipt; and (c) copies of any test results showing that the Product sold without a warning is not a Reformulated Product as defined by Section 2.2.

The Manufacturer shall have thirty (30) days to cure the violations alleged in the Notice of Breach and provide counsel for Vinocur with written documentation of the steps taken for such cure. This right to cure shall only apply to the first alleged breach of this Settlement Agreement.

6. 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.

7. 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 The Manufacturer 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 the Manufacturer from any obligation to comply with any pertinent state or federal toxics control law.

8. 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 The Manufacturer:

Tom Garvey
Three by Three, Inc.
3668 Albion Place North
Seattle, WA 98103

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.

9. 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.

10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

Vinocur agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(f).

11. MODIFICATION

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

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12. **AUTHORIZATION**

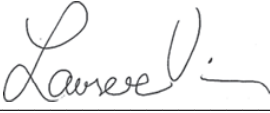
The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 12/13/2019

Date: _____

By: 
Laurence Vinocur

By: _____
Tom Garvey, _____
Three by Three, Inc.

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.

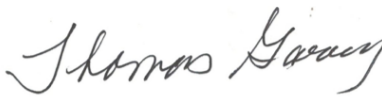
AGREED TO:

AGREED TO:

Date: _____

Date: _____ December 12, 2019 _____

By: _____
Laurence Vinocur

By: 
Tom Garvey,
Three by Three, Inc.