

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties. This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and G & T Industries Inc. (“G&T”), with Vinocur and G&T each individually referred to as a “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. G&T is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

1.2 General Allegations. Vinocur alleges that G&T manufactured, imported, sold, or distributed for sale in the State of California, foam containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) used as padding in upholstered furniture without first providing the clear and reasonable warning required by Proposition 65. TDCPP is a flame retardant added to both soft and rigid polyurethane foam, which is used as cushioning in a variety of products, including upholstered chairs. Vinocur also alleges that G&T employed ten or more persons at some time during the year prior to the issuance of the notice referred to in paragraph 1.4, below.

1.3 Product Description. The products covered by this Settlement Agreement are foam containing TDCPP sold by G&T and used as padding in upholstered furniture sold or distributed for sale in the State of California, including, but not limited to, the Companion Chair, P/N S00417 (collectively “Products”).

1.4 Notice of Violation. On April 16, 2014, Vinocur served G&T and the requisite public enforcement agencies with a Supplemental 60-Day Notice of Violation (“Notice”), alleging that G&T violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users to TDCPP. 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. G&T denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has, sold or distributed for sale 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 G&T of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by G&T of any fact, finding, conclusion of law, issue of law, or violation of law, the same being specifically denied by G&T. This Section shall not, however, diminish or otherwise affect G&T's obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date. For purposes of this Settlement Agreement, the term "Effective Date" means August 1, 2014.

2. INJUNCTIVE RELIEF: REFORMULATION

Commencing on the Effective Date and continuing thereafter, G&T shall, import, ship, sell, and distribute for sale in California only Reformulated Products. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain TDCPP or tris(2-chlorethyl) phosphate ("TCEP") ("Listed Flame Retardants") in any Products (including in the polyurethane foam or other filling material components of any Products) in violation of Proposition 65.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments. Pursuant to Health and Safety Code section 25249.7(b), G&T shall pay \$10,000 in civil penalties. Each penalty payment shall be allocated according to Health and Safety Code section 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 paid to Vinocur.

3.1.1 Initial Civil Penalty. By August 18, 2014,, G&T shall make an initial civil penalty payment of \$5,000. G&T shall provide its payment in two checks for the following amounts made payable to: (a) "OEHHA" in the amount of \$3,750; and (b) "Laurence

Vinocur Trust Account” in the amount of \$1,250.

3.1.2 Final Civil Penalty. On or before September 1, 2014, G&T will make a final civil penalty payment of \$5,000. Pursuant to California Code of Regulations title 11 section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than August 15, 2014, an officer of G&T certifies in writing to Vinocur’s counsel that, as of the date of its certification, one-hundred percent (100%) of the Products G&T ships for sale or distributes for sale in California are Reformulated Products as defined by Section 2, and that G&T will continue to offer only Reformulated Products in California in the future. The option to certify timely reformulation or continued withdrawal of the Products from market in lieu of making the final civil penalty payment constitutes a material term of this Settlement Agreement, and with regard to such term, time is of the essence. By signing this Settlement Agreement, G&T’s President hereby certifies that G&T is and will continue to be in compliance with the terms of paragraph 3.1.2; thereby satisfying the waiver of the final civil penalty.

3.2 Attorney Fees and Costs. The Parties reached an accord on the compensation due to Vinocur and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, G&T shall reimburse Vinocur and his counsel \$35,000 for the fees and costs incurred in investigating, bringing this matter to the attention of G&T’s management, and negotiating a settlement in the public interest. G&T shall provide payment in the form of a check made payable to “Moscone Emblidge Sater & Otis LLP in Trust” and delivered to the address provided in Section 3.3.1 below within five days of the Effective Date.

3.3 Payment Procedures. Payments are to be delivered according to the following subsections.

3.3.1 Payment Address for Vinocur. All payments to Vinocur and his counsel under this Settlement Agreement are to be delivered to the following address:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Controller
220 Montgomery Street, Suite 2100

San Francisco, CA 94104

3.3.2 Payment Addresses for OEHHA. All payments to OEHHA under this Settlement Agreement will be delivered directly to OEHHA (Memo line “Prop. 65 Penalties”) at one of the following addresses, as appropriate:

For United States Postal Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

For Non-U.S. Postal Delivery or Courier:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95812-4010

3.3.3 Copy of Payments to OEHHA. G&T agrees to provide Vinocur’s counsel with a copy of each check payable to OEHHA, simultaneous with its penalty payments to Vinocur, to be delivered to the address provided in Section 3.3.1.

3.3.4 Tax Documentation. G&T agrees to provide a completed IRS 1099 form for its payments to each of the following payees under this Settlement Agreement:

- (a) “Laurence Vinocur” whose address and tax identification number shall be provided after this Settlement Agreement is fully executed by the Parties;
- (b) “Moscone Emblidge Sater & Otis LLP” at the address provided in section 3.3.1; and
- (c) “Office of Environmental Health Hazard Assessment” (EIN: 68-0284486), 1001 I Street, Sacramento, CA 95814.

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of G&T. This Settlement Agreement is a full, final, and binding resolution between Vinocur and G&T of any violation of Proposition 65 that was or could have been asserted by Vinocur, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against G&T, its successors, assignees, parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom G&T directly or indirectly distributes or sells the Products, including, without limitation, Ditto Sales, Inc., its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on unwarned exposures to TDCPP from Products incorporated by other persons or entities into their products for sale or distribution in California prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action, and releases all claims that he may have against G&T, including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to TDCPP from Products incorporated by other persons or entities into their products for sale or distribution in California prior to the Effective Date.

4.2 G&T's Release of Vinocur. G&T, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, assignees and Releasees, hereby waives any and all claims that it may have 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, otherwise seeking to enforce Proposition 65 against it and the Releasees in this matter, or with respect to the Products.

5. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, G&T may request in writing that Vinocur draft and file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment providing a release for the Products in the public interest, and seek court approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If requested, Vinocur and G&T agree to reasonably cooperate and to use their best efforts, and those of their counsel, to obtain an entry of judgment in accordance with the terms of this Settlement Agreement by a superior court in California in a timely manner.

Pursuant to Code of Civil Procedure sections 1021 and 1021.5, if so requested, G&T agrees to reimburse Vinocur and his counsel for the reasonable fees and costs incurred in connection with work performed pursuant to this section in an amount not to exceed \$15,000, exclusive of fees and cost on appeal, if any. Within ten days of receiving an invoice for work performed under this section, G&T will remit payment to the address provided in Section 3.3.1.

6. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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 as to the Products, then G&T may provide written notice to Vinocur of any asserted change in the law, and have no further 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 G&T or any Releasees from any obligation to comply with any pertinent state or federal law.

8. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For G&T:

Roland Grit, President
G & T Industries Inc.
2741 Cathy Lane
Jasper, IN 47546

With a copy to:

John L. Teeples, Esq.
Teeples Law, PLLC
25 Ionia, S. W., Suite 230
Grand Rapids, Michigan 49503

For Vinocur:

Moscone Emblidge Sater & Otis LLP
Attn: Proposition 65 Controller
220 Montgomery Street, Suite 2100
San Francisco, CA 94104

Any Party may, from time to time, specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

9. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts, and by facsimile or portable document format (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. POST-EXECUTION ACTIVITIES

Vinocur agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f).

11. **ENTIRE AGREEMENT**

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

12. **MODIFICATION**

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

13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.


AGREED TO:

AGREED TO:

Date: _____

Date: 8/4/14

By: _____
LAURENCE VINOUCUR

By: 
ROLAND GRIF, President
G & T Industries Inc.

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This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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

13. **AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Date: 8/4/14

By: 
LAURENCE VINO CUR

AGREED TO:

Date: _____

By: _____
ROLAND GRIT, President
G & T Industries Inc.