

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Russell Brimer (“Brimer”) and Vaughan & Bushnell Manufacturing Company (“Vaughan & Bushnell”), with Brimer and Vaughan & Bushnell each individually referred to as a “Party” and collectively as the “Parties.” Brimer is an individual residing in the State of 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. Vaughan & Bushnell employs ten or more individuals 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 and Safety Code § 25249.5 *et seq.* (“Proposition 65”).

1.2 Brimer’s General Allegations

Brimer alleges that Vaughan & Bushnell manufactures, imports, distributes and/or sells in California safety glasses with nose pads that contain di(2-ethylhexyl) phthalate (“DEHP”). DEHP is listed under Proposition 65 as a chemical known to the State of California to cause birth defects or other reproductive harm. Brimer alleges that Vaughan & Bushnell failed to provide consumers and other individuals exposed to DEHP in the safety glasses with nose pads in California with the clear and reasonable health hazard warning required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement, “Products” are defined as safety glasses with nose pads that contain DEHP including, but not limited to, the *Vaughan Safe-T-Vu Protective Eyewear with Reusable Case, LDO387, UPC #0 51218 59733 2*.

1.4 Notice of Violation

On January 17, 2018, Brimer served Vaughan & Bushnell, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”). The Notice alleges that Vaughan & Bushnell violated Proposition 65 by failing to warn customers and consumers in California of the health risks associated with

exposures to DEHP from Vaughan & Bushnell's Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Vaughan & Bushnell denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, sold or distributed for sale in California, including the Products, comply with all laws. Nothing in this Settlement Agreement shall be construed as, nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by Vaughan & Bushnell of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Vaughan & Bushnell. This Section shall not, however, diminish or otherwise affect Vaughan & Bushnell's 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 24, 2018.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

2.1 Reformulation Standards

"Reformulated Products" are Products that contain DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state government agencies for the purpose of determining DEHP content in a solid substance.

2.2 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, Vaughan & Bushnell shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to Section 2.1 above, or shall carry appropriate health hazard warnings per section 2.3, below.


2.3 Product Warnings

Commencing on or before the Effective Date, Vaughan & Bushnell shall provide clear

and reasonable warnings for all Products as set forth in subsections 2.3(a) and (b) for all products that do not qualify as Reformulated Products. 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.

(a) **Retail Store Sales.**

(i) **Product Labeling.** Vaughan & Bushnell shall affix a warning to the packaging, labeling, or directly on each Product provided for sale in retail outlets in California that states:

 **WARNING:** This product can expose you to chemicals including DEHP (Di-2-ethylhexyl phthalate), 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.


Or, the following “Short-Form Warning”:

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

(b) **Mail Order Catalog and Internet Sales.** In the event that Vaughan & Bushnell sells Products via mail order catalog and/or the internet, to customers located in California, after the Effective Date, that are not Reformulated Products, Vaughan & Bushnell shall also provide warnings for such Products sold via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the *specific* Product to which the warning applies without requiring the purchaser to seek out the warning as further specified in Sections 2.3(b)(i) and (ii).

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog shall be in the same type size or larger than the Product description text within the catalog. The warning language required in Section 2.3(a)(i) shall be provided on the same page and in the same location as the display and/or description of the Product. Where it is

impracticable to provide the warning on the same page and in the same location as the display and/or description of the Product, Vaughan & Bushnell may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the following language on the inside of the front cover of the catalog or on the same page as any order form for the Product(s):

 **WARNING:** Certain products identified with this symbol ▼ can expose you to chemicals including DEHP (Di-2-ethylhexyl phthalate), 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.

or

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

The designated symbol must appear on the same page and near the display and/or description of the Product. On each page where the designated symbol appears, Vaughan & Bushnell must provide a header or footer directing the consumer to the warning language and definition of the designated symbol. The catalog warning may use the Short-Form Warning if the warning provided on the Product label also uses the Short-Form Warning content.

(ii) **Internet Website Warning.** Vaughan & Bushnell shall provide the warning language required in Section 2.3(a)(i), or a clearly marked hyperlink to the warning language required in Section 2.3(a)(i) using the word “**WARNING**”, which 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 a Product; (c) on the same page as the price for any Product; to customers who sell or offer the Products for sale in California via the internet. The internet warning may use the Short-Form Warning 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)(2), and in settlement of all claims

alleged in the Notice, Vaughan & Bushnell agrees to pay a total of \$2,500 in civil penalties within five (5) business days of the Effective Date. The penalty payment will be allocated in accordance with Health and Safety Code § 25249.12(c)(1) & (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 retained by Brimer. Vaughan & Bushnell shall deliver its payment in two checks made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) “Russell Brimer, Client Trust Account” in the amount of \$625. Brimer’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payment.

3.2 Attorneys’ Fees and Costs

The Parties reached an accord on the compensation due to Brimer and his counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure § 1021.5 for all work performed in this matter. Within five (5) business days of the Effective Date, Vaughan & Bushnell agrees to pay \$23,500 to Brimer and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Vaughan & Bushnell’s management, and negotiating a settlement in the public interest. Vaughan & Bushnell’s payment shall be delivered in the form of a check payable to “The Chanler Group.”

3.3 Payment Address

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

The Chanler Group
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Brimer’s Release of Vaughan & Bushnell

This Settlement Agreement is a full, final, and binding resolution between Brimer and Vaughan & Bushnell, of any violation of Proposition 65 that was or could have been asserted by Brimer, on his own behalf, or on behalf of his past and current agents, attorneys and representatives against Vaughan & Bushnell or its parents, subsidiaries, affiliated entities under

common ownership, directors, officers, employees, agents, principals, representatives, attorneys, predecessor, successors, assignees (collectively, "Releasees") and each downstream entity to whom Vaughan & Bushnell directly or indirectly distributes, ships or sells Products, including, but not limited to, its distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and their owners, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, and assignees (collectively, "Downstream Releasees"), for all claims based on the failure to warn about exposures to DEHP in Products manufactured, distributed, or sold by Vaughan & Bushnell before the Effective Date.

In further consideration of the promises and agreements herein contained, Brimer, on his own behalf, and on behalf of his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, assignees and heirs hereby waives any and all rights that he may have to institute or participate in, directly or indirectly, any form of legal action, and releases all claims against Vaughan & Bushnell, Releasees and Downstream Releasees including, without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees for all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in Products sold by Vaughan & Bushnell before the Effective Date.

The releases provided by Brimer under this Settlement Agreement are provided solely on Brimer's behalf and are not releases on behalf of the public in California.

4.2 Vaughan & Bushnell's Release of Brimer

Vaughan & Bushnell, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives all claims against Brimer and his attorneys and other representatives, for any action taken or statement made, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. **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.

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 otherwise rendered inapplicable by reason of law generally, or as applied to the Products, then Vaughan & Bushnell may provide written notice to Brimer of the 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.

7. **NOTICE**

Unless specified herein, all correspondence and notice required by 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 Vaughan & Bushnell:

Charles S. Vaughan, President
Vaughan & Bushnell Holdings, Inc.
11414 Maple Ave
Hebron, IL 60034-0390

For Brimer:

The Chanler Group
Attn: Prop 65 Coordinator
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

with copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

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

8. 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.

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

Brimer and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code § 25249.7(f).

10. MODIFICATION

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

11. ENFORCEMENT OF SETTLEMENT AGREEMENT

Any party may file suit in California Superior Court to enforce the terms and conditions contained in this Settlement Agreement. The prevailing party shall be entitled to its reasonable attorneys' fees and costs associated with such enforcement.

No action to enforce this Settlement Agreement may be commenced or maintained unless the party seeking enforcement first notifies the other party of the specific acts alleged to breach this Settlement Agreement and, thereafter, meets and confers with the other Party for a period of not less than thirty (30) days in an effort to resolve the alleged breach informally before serving or filing any action to enforce the terms and conditions contained in this Settlement Agreement.

12. AUTHORIZATION

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

AGREED TO:

Date: 10/24/18

By:

Russell Brimer

AGREED TO:

Date:

11/11/18

By:

Charles S. Vaughan, President

Vaughan & Bushnell Manufacturing Company