

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Laurence Vinocur and Abbott Rubber Company, Inc.**

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) on one hand, and Abbott Rubber Company, Inc. (“Abbott”), with Vinocur and Abbott 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. Abbott employs ten or more persons and is a “person in the course of doing business” as defined in the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”) for purposes of this Settlement Agreement.

### **1.2 General Allegations**

Vinocur alleges that Abbott has manufactured, imported, distributed and/or sold in the State of California certain vinyl/PVC hoses containing di(2-ethylhexyl)phthalate (“DEHP”). 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 those vinyl/PVC hoses identified as *Abbott Rubber Company, Inc. PVC Water Transfer Hose Assembly, #2107832, UPC #7 08289 42040 2* which are or have been either manufactured, and/or imported, and/or distributed, and/or sold and/or offered for sale by Abbott in the State of California, hereinafter the “Products.”

### **1.4 Notice of Violation**

On April 27, 2016, Vinocur served Abbott and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice that Vinocur alleged that Abbott was in violation of California Health & Safety Code §

25249.6 for failing to warn consumers that the Products exposed users in California to DEHP. No public enforcer has diligently prosecuted the allegations set forth in the Notice.

**1.5 No Admission**

Abbott denies the material, factual and legal allegations contained in Vinocur's 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 against interest by either Party 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 against interest by either Party of any fact, finding, conclusion, issue of law or violation of law. However, this section shall not 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 July 22, 2016.

**2. INJUNCTIVE RELIEF: REFORMULATION**

**2.1 Reformulation Standards**

Reformulated Products are defined as those Products containing a maximum of 1000 parts per million of DEHP when analyzed pursuant to 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.

As of the Effective Date, Abbott shall not manufacture, import, distribute, sell or offer the Products for sale in the State of California unless they are Reformulated Products pursuant to this section.

**3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

In settlement of all the claims referred to in this Settlement Agreement, Abbott shall pay a total of \$3,000 in civil penalties in accordance with this Section, within five (5) business days of the Effective Date. The penalty payment will be allocated in accordance with California

Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Vinocur. Abbott shall issue two checks to: one made out to “Laurence Vinocur” in the amount of \$750, and one made out to “The Office of Environmental Health Hazard Assessment.” All penalty payments shall be delivered to the addresses listed in Section 3.1 below.

**3.1 Payment Procedures**

**3.1.1. Issuance of Payments.** Payments shall be delivered as follows:

- (a) All payments owed to Vinocur and OEHHA, pursuant to Section 3.1, shall be delivered to the following payment address:

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

**4. REIMBURSEMENT OF 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 this fee issue to be resolved after the material terms of the agreement had been settled. Abbott then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on 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 agreement. Abbott shall pay \$20,000 for fees and costs incurred as a result of investigating, bringing this matter to Abbott’s attention, and negotiating a settlement in the public interest. Abbott shall make the check payable to “The Chanler Group” and shall deliver payment within five (5) business days of the Effective Date, to the address listed in Section 3.1.1 above.

## **5. RELEASES**

### **5.1 Vinocur's Release of Abbott**

This Settlement Agreement is a full, final and binding resolution between Vinocur and Abbott of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself and *not* on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors and/or assignees, against Abbott, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Abbott directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members and licensees ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in all Products that were either manufactured, and/or imported, and/or distributed, and/or sold and/or offered for sale by Abbott in California before the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur on behalf of himself and *not* on behalf of the public, his past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of his rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he 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 limited to, investigation fees, expert fees and attorneys' fees, -- limited to and arising under Proposition 65 with respect to DEHP in all Products either manufactured, and/or imported and/or distributed, and/or sold and/or offered for sale by Abbott before the Effective Date (collectively "claims"), against Abbott and Releasees, regardless of the date such Products may be sold by a third party to a California consumer. On and after the Effective Date Vinocur agrees, on behalf of himself and his past and current agents, representatives, attorneys, successors and/or assignees, that compliance with this Settlement Agreement by Abbott constitutes compliance with Proposition 65 with respect to DEHP in the Products.

### **5.2 Abbott's Release of Vinocur**

Abbott, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Vinocur and his attorneys and other representatives, for any and all actions taken or statements made by Vinocur and his attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products up through the Effective Date.

**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 Abbott shall provide written notice to Vinocur of any asserted change in the law and shall 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 Abbott from any obligation to comply with any state or federal toxics control law. This Settlement Agreement has no application to products other than the Products, nor does this Settlement Agreement govern Products which do not cause an exposure in the State of California.

**8. NOTICES**

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 Abbott:  
Dennis Weiner, Vice President  
Abbott Rubber Company, Inc.  
1700 Nicholas Blvd.  
Elk Grove Village, IL 60007

With a copy to: Judith M. Praitis  
Sidley Austin LLP  
39<sup>th</sup> Floor  
555 West 5<sup>th</sup> Street  
Los Angeles, CA 90013  
jpraitis@sidley.com

For Vinocur:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
Warren@Chanler.com

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. The communication is deemed delivered on the date of receipt. The Parties may use email for convenience and as a supplement to one of the above-specified methods of delivery.

**10. 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.

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

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

**12. MODIFICATION**

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

13. **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.

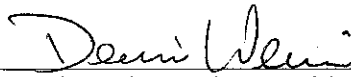
**AGREED TO:**

**AGREED TO:**

Date: July 22, 2016

Date: 7/20/16

By:   
Laurence Vinocur

By:   
Dennis Weiner, Vice-President  
Abbott Rubber Company, Inc.