

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and defendant Cantech Industries, Inc. (“Cantech”), with Vinocur and Cantech each individually referred to as a “Party” and collectively as the “Parties.” Vinocur 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. Cantech 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 section 25249.5 et seq. (“Proposition 65”).

1.2 General Allegations

Vinocur alleges that Cantech manufactured, imported, distributed, and/or sold in the State of California vinyl/PVC electrical tape 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. Vinocur alleges that Cantech failed to provide consumers and other individuals exposed to DEHP from the vinyl/PVC electrical tape it sold in California with a clear and reasonable health hazard warning regarding the reproductive toxicity of DEHP, as required by Proposition 65.

1.3 Product Description

For purposes of this Settlement Agreement “Products” are defined as vinyl/PVC electrical tape containing DEHP that are manufactured, sold, or distributed for sale in California by Cantech including, but not limited to, the *Cantech Electrical Tape, No. 330-18, UPC #0 67735 33018 5*.

1.4 Notice of Violation

On June 29, 2017, Vinocur served Cantech, the California Attorney General, and all other requisite public enforcers with a document titled, “60-Day Notice of Violation” (“Notice”), alleging that Cantech violated Proposition 65 by failing to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

Cantech denies the material, factual, and legal allegations in the Notice, and maintains that all of the products that it has manufactured, imported, stored, distributed, shipped, sold and/or offered 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 Cantech of any allegation, fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Cantech of any allegation, fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Cantech. This Section shall not, however, diminish or otherwise affect Cantech’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 31, 2017.

2. INJUNCTIVE RELIEF: REFORMULATION

2.1 Commitment to Reformulate

Commencing no later than thirty (30) days after the Effective Date and continuing thereafter, Cantech shall only manufacture for sale, purchase for sale, or import for sale in California, Products that are (a) Reformulated Products as defined by Section 2.2, below; or (b) sold and offered for sale with a clear and reasonable warning pursuant to

Section 2.3, below. Cantech shall have no obligation to reformulate or label Products that entered the stream of commerce prior to the Effective Date, for which Cantech is assessed a civil fine pursuant to Section 3.1 and for which it has received a release.

2.2 Reformulation Standard


For the purposes of this Settlement Agreement, “Reformulated Products” are defined as Products that contain DEHP in concentrations 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.

2.3 Clear and Reasonable Warnings

Commencing 30 days from the Effective Date and continuing thereafter, for any Products sold or distributed for sale in California by Cantech that are not Reformulated Products, Cantech will only offer such Products for sale with a clear and reasonable warning in accordance with this Section. Cantech further agrees that any warning used will be prominently placed in relation to the Product with such conspicuousness when 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 of purchase or use. A warning specified in this section shall be deemed reasonable if transmitted in accordance with Title 27, Article 6 of the California Code of Regulations §§ 25602 or 25607.1. For purposes of this Consent Judgment, the following warning statements shall be deemed clear:

WARNING: This product can expose you to chemicals including DEHP, 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.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Cantech agrees to pay a total of \$2,500 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code section 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 amount retained by Vinocur.

Cantech will deliver its payment on or before October 31, 2017 in two checks for the following amounts made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$625. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the penalties paid under this Settlement Agreement.

3.2 Attorneys’ 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. Cantech agrees to pay \$19,500 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of Cantech’s management, and negotiating a settlement that provides a significant public benefit. Cantech’s payment shall be delivered in the form of a check payable to “The Chanler Group” on or before October 31, 2017.

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 Vinocur's Release of Cantech

This Settlement Agreement is a full, final, and binding resolution between Vinocur, in his individual capacity and not on behalf of the public and Cantech, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on his own behalf, or 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, against Cantech, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, agents, principals, insurers, accountants, representatives, attorneys, predecessors, successors, assignees, and each entity to whom Cantech directly or indirectly distributes, ships or sells Products, including, but not limited to, its downstream 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, "Releasees"), for any and all claims based on the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date in California by Cantech, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur, in his individual capacity and not on behalf of the public, 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 Cantech and 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 any and all claims arising under Proposition 65, and regarding the alleged or actual failure to warn about exposures to DEHP in Products manufactured, sold, or distributed for sale before the Effective Date by Cantech.

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

4.2 Cantech's Release of Vinocur

Cantech, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against Vinocur, Vinocur's attorneys, and other representatives, for any and all actions taken or statements made, whether in the course of investigating claims, seeking to enforce Proposition 65 against Cantech 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 Cantech may provide written notice to Vinocur of the asserted change in the law, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to the Products, 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 Cantech:

Shelley Hurwitz, Esq.
Holland & Knight LLP
400 South Hope Street, 8th Floor
Los Angeles, CA 90071

For Vinocur:

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

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)**

Vinocur and his attorneys agree to comply with the reporting form requirements referenced in California Health and Safety Code section 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 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 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:

AGREED TO:

Date: 10/24/2017

Date: _____

By: 
LAURENCE VINO CUR

By: _____
HOWARD COHEN, PRESIDENT
CANTECH INDUSTRIES, INC.

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No action to enforce this Settlement Agreement may be commenced or maintained unless the party seeking enforcement 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 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:

AGREED TO:

Date: _____

Date: Oct 25, 2017

By: _____
LAURENCE VINOUCR

By: 
HOWARD COHEN, PRESIDENT
CANTECH INDUSTRIES, INC.