

# SETTLEMENT AGREEMENT

## **1. INTRODUCTION**

### **1.1 Laurence Vinocur and Central Garden & Pet Company**

This Settlement Agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and Central Garden & Pet Company (Central Garden) with Vinocur and Central Garden 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. Central Garden 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 and Defenses**

Vinocur alleges that Central Garden manufactures, imports, sells and/or distributes for sale in California, gloves with vinyl components that contain di(2-ethylhexyl)phthalate (DEHP), and that it does so without providing the health hazard warning that Vinocur alleges is required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm. Central Garden asserts that it discontinued the shipment of the specific vinyl glove referenced in paragraph 1.3 prior to the Notice described in paragraph 1.4 below.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are gloves with vinyl components containing DEHP including, but not limited to, the *Magic Coat Bath Time Full Coverage Rubber Gloves*, #990002064, K14, UPC #0 45663 97141 0, manufactured, imported, or purchased for resale by Central Garden and distributed, sold and/or offered for sale in the State of California, hereinafter the “Products.”

#### **1.4 Notice of Violation**

On or about October 24, 2018, Vinocur served Central Garden, Four Paws Products, Ltd. and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Central Garden 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**

Central Garden 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 Central Garden 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 Central Garden 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 the date this Agreement has been signed by both parties.

### **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

#### **2.1 Injunctive Relief**

Commencing on the Effective Date and continuing thereafter, Central Garden agrees to reformulate the *Magic Coat Bath Time Full Coverage Rubber Gloves, #990002064, K14, UPC #0 45663 97141 0* so that it qualifies as a Reformulated Product as defined by Section 2.2 if it offers the *Magic Coat Bath Time Full Coverage Rubber Gloves* for sale or resale in the State of California. As soon as reasonably possible, but in no event after September 30, 2019, and continuing thereafter, all other Products that Central Garden sells, manufactures for sale, imports

for sale, ships for sale, purchases for resale in California, or distributes for sale to customers or consumers in California, that Central Garden has reason to believe are sold in California after the Effective Date, shall either be Reformulated Products as defined by Section 2.2, or shall be labeled with a clear and reasonable warning as set forth in Section 2.3. If, after September 30, 2019, Central Garden sells Products that are not Reformulated Products via mail order catalog and/or the internet to customers located in California, Central Garden shall also provide warnings for such Products by identifying the specific Product to which the warning applies as specified in Sections 2.4 through 2.6. There shall be no obligation for Central Garden to provide an exposure warning for Products that entered the stream of commerce prior to the Effective Date.

## **2.2 Reformulation Standards**

(a) “Reformulated Products” are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each component that is accessible to handling by a reasonable consumer 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 or CPSC-CH-C1001.09.4 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.

(b) In the event a reformulation or similar compliance standard greater than that in paragraph (a) is established for DEHP in similar products (i.e., gloves) by either: (1) the California legislature in an amendment to Proposition 65; (2) OEHHA in regulations, safe use determination or other binding guidance, decision or rulemaking; (3) a court in a decision of another Proposition 65 claim; or (4) Vinocur in another settlement, then upon written notice to Vinocur, the parties shall meet and confer within 45 days and exercise reasonable efforts to reach agreement on a corresponding modification of the reformulation standard of paragraph (a).

### 2.3 Clear and Reasonable Warnings

As soon as reasonably possible but in no event after September 30, 2019, Central Garden shall provide clear and reasonable warnings for all Products that are not Reformulated Products provided for sale to customers in California in accordance with Title 27 California Code of Regulations § 25600, *et seq.*, as such may be amended or modified from time to time. Pursuant to current regulations, 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 and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies. If modifications or amendments to Proposition 65 or its regulations made after the Effective Date provide different warning specifications or options, Central Garden may modify the content or delivery methods of its warnings to conform with the then-applicable law; provided, however, that Central Garden provides written notice to Vinocur 30 days before such modification is made.

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

**⚠ WARNING:** This product can expose you to 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](http://www.P65Warnings.ca.gov).

(b) **Short-Form Warning.** Central Garden 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 Sections 2.5 and 2.6, as follows:

**⚠ WARNING:** Cancer and Reproductive Harm – [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

(c) **Other chemicals.** Notwithstanding the specific language in paragraphs 2.3(a) and 2.3(b), Central Garden may, in conformance with applicable regulations, revise the language to identify other chemicals or other endpoints.

(d) **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**

Central Garden shall affix any required warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this agreement, “Product label” means a display of written, printed or graphic material that is printed on or affixed to a Product or its immediate container or wrapper or a shelf sign or placard that sufficiently describes which product to which the warning applies. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other consumer information on the product. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.3(a) or (b), respectively.

#### **2.5 Mail Order Catalog Warnings**

In the event that, after September 30, 2019, Central Garden prints new catalogs and sells Products via mail order through such catalogs to customers located in California, Central Garden shall provide a warning for each Product both on the Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the *specific* Product being purchased. Any warning provided in a mail order catalog shall be in the same type size or larger than other consumer information provided for the Product within the catalog and shall be provided on the same page and in the same location as the display and/or description of the Product. The catalog warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

#### **2.6 Internet Warnings**

If, after the Effective Date, Central Garden sells via the internet *Magic Coat Bath Time Full Coverage Rubber Gloves*, #990002064, K14, UPC #0 45663 97141 0 that have not been Reformulated to customers located in California, Central Garden shall provide warnings for each

Product both on the Product label in accordance with Section 2.4, and by prominently displaying the warning to the customer prior to completing the purchase or during the purchase of the Products without requiring customers to seek out the warning. Central Garden shall use reasonable efforts after the Effective Date to identify, and promptly provide internet warnings for, other Products that are not Reformulated Products. The warning or a clearly marked hyperlink to the warning using the word “WARNING” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the Product; or (c) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display or description of the Product for which it is given in the same type size or larger than the Product description text. The internet warning may use the Short-Form Warning content described in Section 2.3(b) 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), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Central Garden 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 § 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.

Central Garden will deliver its civil penalty payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by Vinocur’s counsel on or before 10 days following the Effective Date. Central Garden shall provide two checks made payable to: (a) “OEHHA” in the amount of \$1,875; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$625. Thereafter, Vinocur’s counsel shall send OEHHA’s portion of the penalties paid by Central Garden 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, Central Garden 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 agreement, Central Garden shall reimburse Vinocur's counsel \$7,500. Central Garden will deliver its payment to the address in Section 3.3 by overnight courier, with a tracking number, such that payment is received by Vinocur's counsel on or before ten days following the Effective Date, 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 Central Garden'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 Central Garden**

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and Central Garden, 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 Central Garden, its

parents, subsidiaries (including Four Paws Products, Ltd.), affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Central Garden directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, 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 Central Garden 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 and *not* on behalf of the public, on behalf of himself, 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 Central Garden, before the Effective Date (collectively, Claims), against Central Garden and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Central Garden. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Central Garden's Products.

#### **4.2 Central Garden's Release of Vinocur**

Central Garden, 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. 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.

**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 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 Central Garden 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 Central Garden from any obligation to comply with any pertinent state or federal toxics control law.

**7. 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 Central Garden:

George Roeth, CEO  
Central Garden & Pet Company  
1340 Treat Boulevard, Suite 600  
Walnut Creek, CA 94597

With a Copy to:

Wendy L. Manley, Esq.  
Wendel, Rosen, Black & Dean, LLP  
1111 Broadway, 24th Floor  
Oakland, CA 94607

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.

**8. 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.

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

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

**10. MODIFICATION**

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

**11. 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: 7/12/19

Date: 7/18/2019

By:   
Laurence Vinocur

By:   
George Roeth, CEO  
Central Garden & Pet Company