

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Laurence Vinocur and Circle Glass LLC

This Settlement Agreement is entered into by and between plaintiff Laurence Vinocur, acting on his own behalf and in the public interest (“Vinocur”), and defendant Circle Glass LLC (“Circle Glass”) with Vinocur and Circle Glass each referred to individually as a “Party” and collectively as the “Parties.” Vinocur is a resident of the State of California who seeks to promote awareness of exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful substances contained in consumer products. Circle Glass 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 and Safety Code § 25249.5 *et seq.* (Proposition 65).

1.2 General Allegations

Vinocur alleges that Circle Glass manufactures, imports, sells and/or distributes for sale in California glass tableware with exterior designs containing lead, and that it does so without providing the health hazard warning that Vinocur alleges is required by Proposition 65. Lead 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 covered by this Settlement Agreement are limited to glass tableware with exterior designs, such as *Circleware Bistro 2 Piece 4 oz. Chef Decaled Salt & Pepper Shaker with Stainless Steel Lid, Style #66763, UPC #7 04572 66763 9* (hereinafter, “Covered Products”) that are manufactured, imported, sold and/or distributed for sale in California by Circle Glass.

1.4 Notice of Violation

On March 21, 2018, Vinocur served Circle Glass and the requisite public enforcement agencies with a 60-Day Notice of Violation (the Notice), alleging that Circle Glass violated

Proposition 65 when it failed to warn its customers and consumers in California that the Covered Products expose users to lead. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.5 No Admission

Circle Glass denies the material, factual, and legal allegations contained in the Notice, and maintains that all of the products that it has sold or distributed for sale in California, including the Covered Products, have been, and are, in compliance 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 Circle Glass of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Circle Glass' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean May 17, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Provide Warnings

Commencing on or before August 31, 2019 and continuing thereafter, Circle Glass shall only manufacture for sale, distribute for sale, sell or import for sale, in or into California, Covered Products that are either: (a) Reformulated Products as defined by Section 2.2; or (b) labeled with a clear and reasonable health hazard warning, as set forth in Sections 2.3 through 2.6.

2.2 Reformulation Standard

"Reformulated Products" are defined as Covered Products that (a) contain lead in concentrations that do not exceed 90 parts per million (ppm), equivalent to 0.009%, in any exterior parts analyzed pursuant to U.S. Environmental Protection Agency (EPA) testing

methodologies 3050B and 6010B; and (b) yield a result of no more than 1.0 micrograms of lead when sampled according to NIOSH 9100 protocol and analyzed according to EPA 6010B. In addition to the above test methodologies, the Parties may use equivalent methodologies utilized by a state or federal agency to determine lead content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before August 31, 2019, for all Covered Products that do not meet the Reformulation Standard, Circle Glass shall provide clear and reasonable warnings for all Covered Products manufactured, imported, sold, distributed, or provided for sale to customers in California in accordance with this Section 2 and/or Title 27, California Code of Regulations, § 25600, *et seq.*, as amended from time to time or as otherwise stated in Sections 2.3 through 2.6 of this Agreement. 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 Covered Product to which the warning applies. Circle Glass shall have no obligation, however, to relabel, withdraw or take any other action with regard to Covered Products manufactured, imported or distributed prior to August 31, 2019.

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

⚠ WARNING: This product can expose you to lead, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) Short-Form Warning. Circle Glass 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 2.4 through 2.6, as follows:

⚠ WARNING: Reproductive Harm – www.P65Warnings.ca.gov

2.4 Product Warnings

For Covered Products that are not Reformulated Products, Circle Glass shall affix a warning to the product label, packaging, or otherwise directly on each Covered Product provided for sale in retail outlets in California or sold by Circle Glass via mail order catalog and/or the internet directly 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. 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. Where the sign, label or shelf tag for the Covered Product is not printed using the color yellow, the warning triangle symbol may be printed in black and white.

2.5 Mail Order Catalog Warnings

In the event that, after August 31, 2019, Circle Glass prints new catalogs and sells Covered Products via mail order through such catalogs to customers located in California, Circle Glass shall provide a warning for each Covered Product that is not a Reformulated Product both on the Covered Product label in accordance with Section 2.4, and in the catalog in a manner that clearly associates the warning with the specific Covered 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 Covered 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 Covered 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 August 31, 2019, Circle Glass sells Covered Products via the internet directly to customers located in California or to retailers with locations in California that are not Reformulated Products, Circle Glass shall provide warnings for each such Covered Product both

on the Covered 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 Covered Products without requiring customers to seek out the warning. Warnings given in conjunction with the sale of the Covered Products via the internet shall appear either: (i) on the same web page on which the Covered Product is displayed; (ii) on the same web page as the order form for the Covered Product; or (iii) 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 Covered Product for which it is given in the same type size or larger than the Covered 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. Circle Glass may also comply with this section by providing the warning using a clearly marked hyperlink that includes the word “**WARNING**” on the same web page and in the same location as the display and/or description of the Covered Product.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims referred to in the Notice, Circle Glass agrees to pay \$10,000 in civil penalties. Circle Glass’ civil penalty payment will be allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment (OEHHA), and the remaining twenty-five percent (25%) of the penalty payment retained by Vinocur, as set forth in Sections 3.1.1 and 3.1.2, below. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payments under this Section.

3.1.1 Initial Civil Penalty Payment.

Within seven days of the Effective Date, Circle Glass shall pay an initial civil penalty in the amount of \$3,000. The initial civil penalty due under this Section shall be in the form of two separate checks, made payable as follows: (a) a check payable to “OEHHA” in

the amount of \$2,250; and (b) a check payable to “Laurence Vinocur, Client Trust Account”, in the amount of \$750.

3.1.2 Final Civil Penalty Payment.

Circle Glass shall pay a final civil penalty of \$7,000. However, the final civil penalty shall be waived in its entirety, if, on or before the December 15, 2019, an officer of Circle Glass provides a declaration attesting to and certifying that, as of December 15, 2019, all Covered Products Circle Glass manufactures, imports, distributes, sells or offers for sale, in or into California, are Reformulated Products, as defined by Section 2.2, and that Circle Glass will continue to manufacture, import, sell or distribute for sale only Covered Products that are Reformulated Products in the future. The option to certify to product reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence. Unless waived, on or before December 15, 2019, Circle Glass shall provide its final civil penalty payment as follows: (i) a check in the amount of \$5,250 payable to “OEHHA” and (ii) a check in the amount of \$1,750 payable to “Laurence Vinocur, Client Trust Account.”

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 their fees and costs. Shortly after the other settlement terms had been finalized, the Parties negotiated the compensation to be paid 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 Settlement Agreement and court approval of the same, but exclusive of fees and costs on appeal, if any. Within seven days of the Effective Date, Circle Glass agrees to pay \$37,500 by a check made payable to “The Chanler Group” for all fees and costs incurred investigating, bringing this matter to Circle Glass’ attention, litigating, and negotiating a settlement in the public interest.

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

The Chanler Group shall be responsible for disbursement of payments to the State of California as called for by this Settlement Agreement.

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of Proposition 65 Claims

Vinocur, acting on his own behalf and not in the public interest, releases Circle Glass and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys (Releasees) and each entity to or through whom Circle Glass directly or indirectly distributes or sells the Covered Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, internet marketplaces, franchisers, cooperative members, licensors and licensees (Downstream Releasees) for any violations arising under Proposition 65 for unwarned exposures to lead from the Covered Products manufactured, imported, distributed or sold by Circle Glass prior to August 31, 2019, as set forth in the Notice. Compliance with the terms of this Settlement Agreement constitutes compliance with Proposition 65 by Circle Glass with respect to the alleged or actual failure to warn about exposures to lead in Covered Products sold prior to August 31, 2019.

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 Covered Products, as alleged in the

Notice, manufactured, distributed, sold and/or offered for sale by Circle Glass, prior to August 31, 2019 against Circle Glass 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 Circle Glass. Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Circle Glass' Covered Products.

4.2 Circle Glass' Release of Vinocur

Circle Glass, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waive 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 in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered 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 Covered Products, then Circle Glass 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 Covered Products are so affected. Nothing in this

Settlement Agreement shall be interpreted to relieve Circle Glass from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

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

To Circle Glass:
Sidney Elmann, CEO
Circle Glass LLC
3 East 44th Street, 6th Floor
New York, NY 10017

To Vinocur:
Attn: Proposition 65 Coordinator
The Chanler Group
2550 Ninth Street, Suite 205
Berkeley, CA 94710

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.

8. COUNTERPARTS, FACSIMILE AND PDF 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 REPORTING REQUIREMENTS

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

10. 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, or understandings related thereto, if any, are hereby merged herein and therein. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Settlement Agreement have been made by any Party hereto. No other agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties hereto.

11. MODIFICATION

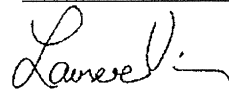
This Settlement Agreement may only be modified by the written agreement of the Parties or by an order of a court of competent jurisdiction.

12. AUTHORIZATION

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


AGREED TO:

Date: 5/16/19

By: 
LAURENCE VINOCUR

AGREED TO:

Date: 7/29/19

By: 
Sidney Elmann, CEO
CIRCLE GLASS LLC