

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1. Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Everhard Products, Inc. (“Everhard”), with Vinocur and Everhard collectively referred to as the “Parties.” Vinocur is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Everhard 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 § 25249.6 *et seq.* (“Proposition 65”).

1.2. General Allegations

Vinocur alleges that Everhard has manufactured, distributed, and/or sold in the State of California vinyl tool grips containing di(2-ethylhexyl)phthalate (“DEHP”) without the requisite Proposition 65 warning. 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 covered by this Settlement Agreement are vinyl/PVC tool grips including, but not limited to, *Klenk 6" Adjustable Wrench*, DA78010, H25-854, UPC #7 75468 01065 5, *Klenk Dual Snap Ring Pliers*, DA76190, UPC #7 75468 03405 7, *Long Nose Pliers*, DA76110, *Diagonal Cut Pliers*, DA76120, *Extended Bent Nose Pliers*, DA76170, *Locking Pliers 7"*, DA76220, *Wire Stripper*, DA76410, *4" Adjustable Wrench*, DA78000, *8" Adjustable Wrench*, DA78020, *10" Adjustable Wrench*, DA78030, and *12" Adjustable Wrench*, DA78040, which have been manufactured, imported, distributed, and/or sold in California by Everhard (hereinafter the “Products”).

1.4. Notice of Violation

On or about September 29, 2016, Vinocur served Everhard and various public enforcement agencies with a “60-Day Notice of Violation” (“Notice”), alleging that Everhard was in violation of Proposition 65 for failing to warn its customers and consumers in California that

vinyl tool grips containing DEHP that Everhard manufactured, imported, distributed, and/or sold in California exposed 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

Everhard denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products it has manufactured, imported, distributed, and/or sold 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 Everhard of any fact, finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Everhard of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied by Everhard. This section shall not, however, diminish or otherwise affect Everhard'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 December 8, 2016.

2. INJUNCTIVE RELIEF

2.1. Reformulation

Commencing on the Effective Date and continuing thereafter, Everhard shall only manufacture, import, distribute, ship, sell, or offer for sale in California Products that contain no more than 1,000 parts per million of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by state or federal agencies for the purpose of determining DEHP content in a solid substance.

2.2. Prohibition Against Over-Warning

Commencing on the Effective Date, Everhard shall not provide, nor require or request that any other party provide, a warning pursuant to Proposition 65 for the Product unless it knows, or should know, it contains at least one chemical listed pursuant to Proposition 65.

3. MONETARY PAYMENTS

3.1. Payments Pursuant to Health & Safety Code § 25249.7(b)

Pursuant to Health & Safety Code § 25249.7, subdivision (b) Everhard shall pay \$4,000 in civil penalties. This payment amount includes a credit of \$16,000, based on Everhard's prompt agreement to reformulate the Products. Civil penalties shall be allocated according to California Health & Safety Code § 25249.12, subdivisions (c)(1) & (d), with seventy-five percent (75%) of the penalty amount paid to the California Office of Environmental Health Hazard Assessment and the remaining twenty-five percent (25%) remitted to Vinocur.

Everhard shall issue two checks made payable as follows: (a) to "OEHHA" in the amount of \$3,000; and (b) to "Laurence Vinocur Client Trust Account" in the amount of \$1,000. Payment pursuant to this Section 3.1 shall be delivered to Vinocur's counsel on or before three days after the Effective Date at the Payment address provided in Section 3.4.

3.2. Representations

Everhard represents that the sales data, product reformulation and/or knowledge of DEHP that it provided to Vinocur in negotiating this Settlement Agreement was truthful and a material factor upon which Vinocur relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine months of the Effective Date, Vinocur discovers and presents to Everhard evidence demonstrating that the preceding representation was materially inaccurate, then Everhard shall have 30 days to meet and confer regarding Vinocur's contention. In the event the 30-day meet and confer period passes without any such resolution between Vinocur and Everhard, then Vinocur shall be entitled to make an appropriate motion to the Court to cure any breach of this Section 3.2 of the Settlement Agreement pursuant to Code of Civil Procedure § 664.6. The prevailing Party on the motion shall be entitled to its reasonable attorneys' fees as approved by the Court. The parties hereby stipulate and request for the Court to retain jurisdiction over the parties to enforce the settlement until the expiration of the nine (9) months following the Effective Date pursuant to Code of Civil Procedure § 664.6.

3.3. Reimbursement of Fees and Costs

The Parties reached an accord on the compensation due Vinocur 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. Under these legal principles, Everhard shall pay \$19,750 for all fees and costs incurred investigating, bringing this matter to the attention of Everhard, and negotiating a settlement in the public interest. Everhard shall deliver its payment pursuant to this Section 3.3 in the form of a check payable to “The Chanler Group” on or before three days after the Effective Date at the Payment Address provided in Section 3.4.

3.4. Payment Address

All payments required by this Section 3 shall be delivered to Vinocur’s counsel at the following address:

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

4. RELEASES

4.1. Vinocur’s Release of Everhard

This Settlement Agreement is a full, final, and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and Everhard 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 Everhard, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Everhard directly or indirectly distributes or sells the 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 the specific units of the Products that were manufactured, distributed, sold, and/or offered for sale by Everhard in California before the Effective Date.

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 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 limited to, investigation fees, expert fees, and attorneys' fees, but exclusive of fees and costs on appeal--limited to and arising under Proposition 65 with respect to DEHP in the Products manufactured, distributed, sold, and/or offered for sale by Everhard before the Effective Date (collectively "claims"), against Everhard and Releasees.

4.2. Everhard's Release of Vinocur

Everhard 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 (or those that could have been taken or 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 Product.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision is held 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.

7. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be sent by: (i) personal delivery; (ii) first-class, registered or certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at the following addresses:

For Everhard:

James Anderson, President
Everhard Products, Inc.
1016 Ninth Street SW
Canton, OH 44707

For Vinocur:

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

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 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. POST-EXECUTION ACTIVITIES

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

10. MODIFICATION

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

11. AUTHORIZATION

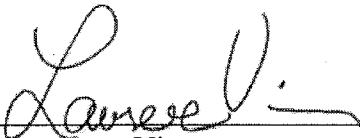
The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

AGREED TO:

Date: 12/6/2016

Date: _____

By:  _____
Laurence Vinocur

By: _____
James Anderson, President
Everhard Products, Inc.

For Everhard:

James Anderson, President
Everhard Products, Inc.
1016 Ninth Street SW
Canton, OH 44707

For Vinocur:

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
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AGREED TO:

AGREED TO:

Date: _____

Date: 12/5/16

By: _____
Laurence Vinocur

By: James Anderson, President
James Anderson, President
Everhard Products, Inc.