

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between First Texas Products, LLC (“First Texas”) and Laurence Vinocur (“Vinocur”), with First Texas and Vinocur 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 used in consumer products. Vinocur alleges that First Texas 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 First Texas manufactures, imports, sells and/or distributes for sale in California headphones with vinyl/PVC components containing di(2-ethylhexyl)phthalate (“DEHP”). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm. Vinocur alleges that First Texas failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from headphones with vinyl/PVC components.

1.3 Product Description

The products that are covered by this Settlement Agreement are headphones with vinyl/PVC components containing DEHP including, but not limited to, the *BH Stereo Headphones, HEAD-PL*, UPC #0 89723 12300 5, and *Tekenetics Professional Headphones, BOXHEAD-TB*, #04803284, UPC #0 89723 69568 7, manufactured, imported, sold or distributed for sale in California by First Texas (the “Products”).

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1.4 Notice of Violation

On or about March 13, 2015, Vinocur served First Texas and certain requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that First Texas violated Proposition 65 when it failed to warn its customers and consumers in California that its headphones with vinyl/PVC components 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

First Texas denies the material, factual, and legal allegations contained in the Notice and maintains that all of the products that they have sold and distributed in the State of 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 First Texas of any 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 First Texas of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by First Texas. However, this Section shall not diminish or otherwise affect First Texas' obligations, responsibilities, and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 7, 2015.

2. INJUNCTIVE RELIEF: REFORMULATION COMMITMENT; WARNINGS

2.1 Reformulation Commitment and Standards

On or before January 1, 2016 and continuing thereafter, First Texas shall only manufacture for sale, purchase for sale, or otherwise sell in California (with the exception set forth in Paragraph 2.2 below), "Reformulated Products." For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP, di-n-butyl ("DBP"), butyl benzyl phthalate ("BBP") and Diisononyl phthalate ("DINP") in concentrations of less than 0.1

percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C, CPSC-WH-C1001-09.3, or other methodology utilized by federal or state government agencies for the purpose of determining DEHP, DBP, BBP and DINP content in a solid substance.

2.2 Sale of Existing Products with Warnings

Nothing in this Settlement Agreement shall preclude First Texas from shipping and selling in California its current existing inventory of Products. Commencing on September 1, 2015, First Texas agrees that any Products that First Texas manufactured prior to September 1, 2015, and which First Texas directly distributes to, imports to, ships to, sells in, or offers for sale in California that are not Reformulated Products as defined in Section 2.1 will include a warning affixed to the packaging, labeling, or directly on each Product that states:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects and other reproductive harm.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to California Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, First Texas agrees to pay \$13,000 in civil penalties. Each penalty payment will be allocated by Vinocur in accordance with California Health and Safety Code § 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty amount paid to Vinocur.

3.1.1 Initial Civil Penalty. On or before the Effective Date, First Texas shall pay an initial civil penalty in the amount of \$3,000. First Texas shall provide its payment in one check made payable to “Laurence Vinocur, Client Trust Account.”

3.1.2 Final Civil Penalty. On or before November 10, 2015, First Texas shall

pay a final civil penalty of \$10,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Vinocur agrees that the final civil penalty shall be waived in its entirety, however, if, no later than November 1, 2015, an officer(s) for First Texas Products, LLC provides Vinocur's counsel with a signed declaration certifying that all of the Products First Texas ships for sale or distributes for sale in California as of the date of the declaration are Reformulated Products, and that First Texas will continue to offer only Reformulated Products in California in the future. The option to certify to expedited reformulation in lieu of making the final civil penalty payment required by this Section is a material term, and time is of the essence.

To obtain a waiver of the final civil penalty, First Texas must deliver the declaration(s) on its behalf certifying to expedited reformulation to Vinocur's counsel at the address provided in Section 3.3, below. In the event that First Texas does not timely certify to its expedited compliance or make the final civil penalty payment required by this Section, the Parties agree that Vinocur may seek relief under any available legal remedy. If successful, the Parties further agree that Vinocur shall be entitled to his reasonable attorneys' fees and costs pursuant to general contract principles and California Code of Civil Procedure § 1021.5.

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, First Texas expressed a desire to resolve Vinocur's fees and costs. The Parties then negotiated a resolution of 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 in this matter. Under these legal principles, First Texas agrees to pay \$27,000 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of First Texas's management, and negotiating a settlement in the public interest. First Texas' payment shall be due on the Effective Date by a check payable to "The Chanler Group."

3.3 Payment Address

All payments required by this Sections 3.1 and 3.2, above, shall be delivered to the following address:

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 First Texas

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and First Texas, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on behalf of himself, or on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims, against First Texas, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom First Texas directly or indirectly distributes or sells Products, including but not limited to downstream distributors, wholesalers, customers, retailers (including Big 5 Sporting Goods Corporation), franchisees, cooperative members, licensors, and licensees ("Releasees"), based on the failure to warn about alleged exposures to DEHP contained in Products manufactured, distributed, sold or offered for sale by First Texas in California before the date that this Settlement Agreement is fully executed by the Parties.

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf and *not* on behalf of the public, and on behalf of his past and current agents, representatives, attorneys, successors, and/or assignees, hereby covenants not to sue and waives any right 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 and in equity, all 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, DBP, BBP and DINP contained in the

Products manufactured, distributed, sold and/or offered for sale by First Texas before the Effective Date of this Settlement Agreement.

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.

4.2 First Texas' Release of Vinocur

First Texas, on its own behalf, and on behalf of 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 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 otherwise rendered inapplicable by reason of law generally, as to First Texas specifically as a result of a statutory exemption, or as to the Products, then First Texas may provide written notice to Vinocur of any asserted change in the law, or its applicability to First Texas or the Products, and First Texas shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, First Texas or the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to 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:

To First Texas:

Peg Carew Toledo, Esq.
Toledo Don LLP
3001 Douglas Blvd., Suite 340
Roseville, CA 95661

To Vinocur:

Proposition 65 Coordinator
The Chanler Group
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. 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:

Date: August 11, 2015

By: 
Laurence Vinocur

AGREED TO:

Date: AUGUST 11, 2015

By: 
Thomas Walsh, President
First Texas Products, LLC