

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and GSM Marketing, L.L.C. (“GSM”), with Vinocur and GSM 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. Vinocur alleges that GSM 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, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

Vinocur alleges that GSM manufactures, imports, distributes, sells and/or offers for sale in California flagging tape 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 GSM failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from flagging tape.

### 1.3 Product Description

The products that are covered by this Settlement Agreement are flagging tape containing DEHP including, but not limited to, the *HME Products Trail-Marking Ribbon, TMR, UPC #8 30636 00407 9*, manufactured, imported, distributed, sold by GSM and offered for sale in California (collectively, the “Products”).

### 1.4 Notice of Violation

On or about January 17, 2018, Vinocur served GSM, and certain requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging that GSM violated Proposition 65 by failing 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**

GSM denies the material, factual, and legal allegations contained in the Notice and maintains that all of the 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, nor shall compliance with this Settlement Agreement constitute or be construed as, an admission by GSM of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by GSM. However, this Section shall not diminish or otherwise affect GSM’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 the date on which the parties execute this Settlement Agreement.

**2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

**2.1 Reformulation Standard**

“Reformulated Products” are Products containing DEHP in a concentration of less than 0.1 percent (1,000 parts per million) 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 and analyzed using U.S. Environmental Protection Agency (“EPA”) methodology 8270C, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

**2.2 Reformulation Commitment**

As of the Effective Date, all Products shall qualify as Reformulated Products as defined in Section 2.1, above, or shall be accompanied by a Consumer Product Exposure Warning pursuant to Section 2.3, below.

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## **2.3 Consumer Product Exposure Warning**

**2.3.1 Warning Content.** As of the Effective Date, for all Products distributed, shipped, sold or offered for sale in California by GSM other than Reformulated Products, GSM shall provide clear and reasonable Consumer Product Exposure Warnings that state:

**⚠WARNING:** This product can expose you to di(2-ethylhexyl)phthalate (DEHP) 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](http://www.P65Warnings.ca.gov).

-or-

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

**2.3.2 Warning Placement.** GSM shall affix, or cause to be affixed, the Consumer Product Exposure Warning to the packaging, labeling or directly on any Products that are not Reformulated Products which are distributed, shipped, sold or offered for sale within California. 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. Each warning shall be provided in a manner such that the California consumer or user understands to which *specific* Product(s) the warning applies, so as to minimize the risk of consumer confusion. By entering into this Consent Judgment, the Parties do not intend to expand or restrict any obligations or responsibilities that may be imposed upon GSM by laws other than Proposition 65, nor do the Parties intend this Consent Judgment to affect any defenses available to GSM under laws other than Proposition 65.

## **3. MONETARY SETTLEMENT TERMS**

### **3.1 Civil Penalty**

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notice, GSM agrees to pay a total of \$1,750 in civil penalties. The penalty payment will be allocated in accordance with 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 retained by Vinocur. Within 5 days of the Effective Date,

GSM shall provide its payment as follows: (i) a check in the amount of \$1,312.50 payable to “OEHHA” and (ii) a check in the amount of \$437.50 payable to “Laurence Vinocur Client Trust Account.”

Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of the penalty payments made 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 § 1021.5 for all work performed in this matter. Under these legal principles, within 5 days of the Effective Date, GSM agrees to pay \$21,500 to Vinocur and his counsel for all fees and costs incurred investigating, bringing this matter to the attention of GSM’s management, and negotiating a settlement in the public interest. GSM’s payment shall be in the form of a check payable to “The Chanler Group.”

### **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 GSM**

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual, and *not* on behalf of the public, and GSM, of any violation of Proposition 65 that was or could have been asserted by Vinocur on behalf of himself, his past and current agents, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, predecessors, successors, and/or assignees and heirs, against GSM, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom GSM directly or indirectly distributes, ships, or sells the Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, and their owners, directors, officers, agents, principals, employees, attorneys, insurers,

accountants, predecessors, successors, and assigns, including Dick's Sporting Goods ("Releasees"), for any and all claims based on the failure to warn about alleged exposures to DEHP contained in the Products sold prior to 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, principals, employees, insurers, accountants, entities under his ownership or direction, representatives, attorneys, successors, and/or assignees, 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 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 sold prior to the Effective Date (collectively "claims") against GSM and Releasees.

#### **4.2 GSM's Release of Vinocur**

GSM, 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 by Vinocur and his attorneys and other representatives, whether in the course of investigating claims articulated in the Notice, 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 DEHP or as to the Products, then GSM may provide written notice to Vinocur of any asserted change in the law, or its applicability to GSM or the

Products, and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, GSM 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:

**GSM:**

Edward Castro, CEO  
Good Sportsman Marketing, L.L.C.  
3385 Roy Orr Blvd, Ste B  
Grand Prairie, TX 75050

**Vinocur:**

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

on behalf of **GSM:**

Zachary S. Schumacher, Esq.  
Law Office of Zachary S. Schumacher  
1350 Columbia Street, Suite 503  
San Diego, CA 92101

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 Health and Safety Code § 25249.7(f).

**10. MODIFICATION**

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

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**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.

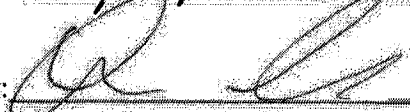
**AGREED TO:**

Date: 8/3/2018

By:   
Laurence Vinocur

**AGREED TO:**

Date: 7/31/2018

By:   
Edward Castro, CEO  
Good Sportsman Marketing, L.L.C.