

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and International Sourcing Company, Inc. (“International Sourcing”), with Vinocur and International Sourcing 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. International Sourcing 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 International Sourcing manufactures, imports, sells or distributes for sale in California safety glasses with vinyl/PVC components containing di(2-ethylhexyl)phthalate (also known as bis(2-Ethylhexyl)phthalate) (“DEHP”), and that it does so without first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

1.3 Product Description

The products covered by this Settlement Agreement are safety glasses that are manufactured, imported, sold, or distributed for sale in California by International Sourcing and are specifically limited to the *Dane by Cordova Safety Eyewear, EL20ST, EBL10S15, UPC #7 96326 51016 2* (hereinafter, “Products”).

1.4 Notice of Violation

On August 29, 2018, Vinocur served International Sourcing, the California Attorney General, and other requisite public enforcers with a 60-Day Notice of Violation (“Notice”),

alleging that International Sourcing violated Proposition 65 when it failed to warn its customers and consumers in California of the health risks associated with exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1.5 No Admission

International Sourcing denies the material, factual, and legal allegations in the Notice, and maintains that all of the products it sold and distributed for sale 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 International Sourcing 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 International Sourcing of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by International Sourcing. This Section shall not, however, diminish or otherwise affect International Sourcing'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 May 10, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Provide Warnings


Commencing on the Effective Date and continuing thereafter, International Sourcing agrees to only manufacture, import, distribute, sell or offer for sale, in California, Products that are either: (a) Reformulated to meet the standard detailed in Section 2.2, below; or (b) Products bearing a clear and reasonable health hazard warning, as outlined in the following Sections 2.3 through 2.6.

2.2 Reformulated Products and Reformulation Standard Defined

“Reformulated Products” are Products containing DEHP in concentrations of less than 0.1 percent (1,000 parts per million) in each accessible component (i.e. any component that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization (“Reformulation Standard”) utilizing U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date and continuing thereafter, International Sourcing agrees to provide clear and reasonable health hazard warnings for all Products it manufactures, imports, distributes, sells or offers for sale in California that do not meet the Reformulation Standard. 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 of purchase or use, in a manner such that consumers understand the Product to which the warning applies. For purposes of this Settlement Agreement, a clear and reasonable warning displayed or transmitted according the above criteria, and containing the following statement, shall satisfy these requirements:

 WARNING: This product can expose you to chemicals, including 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.

Or, if placed directly on the Product or its labeling, International Sourcing may, at its option, utilize the following short-form warning, provided it appears in a type size no smaller than the largest type size used for other consumer information on the Product’s label, and in no case smaller than six-point type, subject to the additional requirements in Sections 2.4 and 2.5 (to the extent applicable), as follows:

⚠ WARNING: Cancer and Reproductive Harm-

www.P65Warnings.ca.gov

International Sourcing shall affix one of the foregoing warnings to the Product label or otherwise directly on each Product provided for sale in California or sold via mail order catalog and/or the internet to customers located in California. For the purpose of this Settlement 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.

2.4 Mail Order Catalog Warnings

In the event that, after the Effective Date, International Sourcing prints new catalogs and sells Products via mail order through such catalogs to customers or consumers located in California, International Sourcing shall provide a warning for each Product, both on the Product label in accordance with Section 2.3, and in the catalog, according to this Section, in a manner that clearly associates the warning with the specific Product being purchased. The catalog warning may use the Short-Form Warning content described in Section 2.3 if the warning provided on the Product label also uses the Short-Form Warning content. For purposes of this Section 2.4, International Sourcing shall not be deemed to sell Products via mail order through a catalog unless the catalog provides a telephone number or facsimile number through which an order may be placed.

2.5 Internet Warnings

If, after the Effective Date, International Sourcing sells Products via the internet to customers or consumers located in California, International Sourcing shall provide warnings for each Product both on the Product label, in accordance with Section 2.3, supra, and by prominently displaying the warning to the customer prior to completing the purchase or during the checkout process for purchase of the Products without requiring customers to seek out the warning. Warnings given in conjunction with the sale of the Products via the internet shall appear either: (i) on the same web page on which the Product is displayed; (ii) on the same web page as the order form for the Product; or (iii) on one or more web pages displayed

to a purchaser prior to or 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, or otherwise in a manner such that consumers understand the Product to which the warning applies. International Sourcing may utilize the Short-Form Warning, described in Section 2.3 if the warning provided on the Product label also uses the Short-Form Warning.

International Sourcing may also comply with this section by providing the warning using a clearly marked hyperlink that includes the word “**WARNING**” either: (i) on the same web page on which the Product is displayed; (ii) on the same web page as the order form for the Product; or (iii) on one or more web pages displayed to a purchaser prior to or during the checkout process. The warning must appear in type large enough so that the consumer does not have to search for it in the general content, and in a manner that clearly associates it with the Product to which the warning applies.

For purposes of this Section 2.5, International Sourcing shall not be deemed to sell Products via the internet unless the order can be placed on or through International Sourcing’s website.

2.6 Other Methods of Compliance

Notwithstanding the foregoing, Sections 2.3 through 2.5 shall not be the exclusive means by which International Sourcing may provide warnings that comply with Proposition 65 from and after the Effective Date. Specifically, International Sourcing may also comply with this Section by providing clear and reasonable warnings, pursuant to Title 27 California Code of Regulations, Article 6 “Clear and Reasonable Warnings” (§§ 25600 – 25607.31), by any means authorized, as amended from time to time. Any “clear and reasonable” warning that complies with Proposition 65 shall be deemed to be in compliance with this Settlement Agreement.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims alleged in the Notice and referred to in this Settlement Agreement, within five business days of the Effective Date, International Sourcing agrees to pay \$3,000 in civil penalties. The civil penalty payment shall 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 paid to Vinocur. International Sourcing shall issue its payment in two checks for the following amounts: (a) “OEHHA” in the amount of \$2,250; and (b) “Laurence Vinocur, Client Trust Account” in the amount of \$750. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of any penalty payment made under this Settlement Agreement.

3.2 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 this Settlement Agreement had been settled. After the Parties reached an agreement as to all other settlement terms, the Parties then reached an accord on 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 through the mutual execution of this Settlement Agreement. Under these legal principles, within five business days of the Effective Date, International Sourcing agrees to pay \$22,500 to Vinocur and his counsel for all fees and costs incurred in investigating, bringing this matter to the attention of International Sourcing’s management, and negotiating a settlement in the public interest. International Sourcing’s payment shall be delivered 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
2550 Ninth Street
Parker Plaza, Suite 205
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of International Sourcing

This Settlement Agreement is a full, final, and binding resolution between Vinocur, on his own behalf but not on behalf of the public, and International Sourcing, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on his own behalf, on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against International Sourcing, its parents (including, but not limited to, its immediate parent company, Bunzl Distribution Midcentral, Inc., and its ultimate parent company, Bunzl plc), subsidiaries, affiliated entities under common ownership, directors (or equivalent), officers, employees, agents, representatives and attorneys, and each entity to whom International Sourcing directly or indirectly distributes or sells Products, including, but not limited, to its downstream distributors, wholesalers, customers, retailers (including, but not limited to, The Home Depot, Inc., its parents, subsidiaries and affiliated entities under common ownership), franchisees, cooperative members, and licensees (collectively, "Releasees"), based on the failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale in California by International Sourcing before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf and not on behalf of the public, on behalf of his past and current agents, representatives, attorneys, successors, and 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 against International Sourcing and Releasees including, without limitation,

all actions and causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, expenses, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to the alleged or actual failure to warn about exposures to DEHP in Products manufactured, distributed, sold or offered for sale by International Sourcing, before the Effective Date.

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 International Sourcing's Release of Vinocur

International Sourcing, on its own behalf and on behalf of 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 by Vinocur and his attorneys and other representatives, with respect to the Products, prior to the Effective Date, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is held by a court to be unenforceable, the validity of the remaining provisions 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, or as to the Products, then International Sourcing may 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.

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:

For International Sourcing:

Jimmy Garbuzinski, General Manager
International Sourcing Company, Inc.
4025 Viscount Avenue
Memphis, TN 38118

with a copy to:

Ryan Fehlig, Esq.
Bunzl North America
One CityPlace Drive, Suite 200
St. Louis, MO 63141

For 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 § 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: 5/7/19

By: 
LAURENCE VINO CUR

AGREED TO:

Date: 05/06/2019

By: 
Daniel J. Lett, Secretary
INTERNATIONAL SOURCING COMPANY