

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Laurence Vinocur and Kester LLC.

This Settlement Agreement (Settlement Agreement) is entered into by and between Laurence Vinocur (Vinocur) and Kester LLC (fka Kester, Inc.) (Kester) with Vinocur and Kester collectively referred to as the “Parties.” Vinocur is an individual residing in 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. Kester 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 §§ 25249.5 *et seq.* (Proposition 65).

1.2 General Allegations

Vinocur alleges that Kester manufactures, imports, sells and/or distributes for sale in California, solder that contains 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 cancer, birth defects and other reproductive harm.

1.3 Product Description


The products that are covered by this Settlement Agreement are solder containing lead including, but not limited to, the *Kester Leaded Solder, “44” Rosin Core, 24-6040-0027* that are manufactured, imported, distributed, sold and/or offered for sale by Kester in the State of California, hereinafter the “Products.”

1.4 Notice of Violation

On or about May 31, 2018, Vinocur served Kester, Illinois Tool Works Inc and certain requisite public enforcement agencies with a 60-Day Notice of Violation (Notice), alleging that Kester violated Proposition 65 when it failed to warn its customers and consumers in California

that the Products expose users to lead. 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 Kester's Compliance With Proposition 65

Kester asserts that it has at all times labeled its solder with a Proposition 65 warning. Prior to August 2018, Kester's solder carried a label that stated "**Warning:** This product CONTAINS LEAD which is known to the State of California to cause cancer, or birth defects or other reproductive harm." Kester solder produced from August 30, 2018, includes the following statement: " **WARNING:** This product can expose you to chemicals including LEAD, 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." On or about July 23, 2018, Kester notified its customers of the impending label change for its solder, as well as of the necessity of providing warnings for Kester solder that Kester's customers sell online to purchasers in California. Vinocur disagrees with certain facts recited and legal positions taken by Kester in this Section 1.5.

1.6 No Admission

Kester denies the material, factual and legal allegations contained in the Notice and maintains that all 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 an admission by Kester of any fact, finding, issue of law or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Kester of any fact, finding, conclusion, issue of law or violation of law. This section shall not, however, diminish or otherwise affect the obligations, responsibilities and duties under this Settlement Agreement.

1.7 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 21, 2018.

2. **INJUNCTIVE RELIEF**

2.1 **Clear and Reasonable Warnings**

Commencing on or before the Effective Date, Kester shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with Sections 2.1 through 2.4 and/or Title 27 California Code of Regulations § 25600, *et seq.*, as amended from time to time. 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 Product to which the warning applies.

(a) **Warning.** For products packaged by Kester on or after August 30, 2018, the warning shall consist of the following statement or substantially similar language (Warning):

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

(b) **Short-Form Warning.** Kester may, but is not required to, use the following short-form warning as set forth in this subsection 2.1(b) (Short-Form Warning), and subject to the additional requirements in Sections 2.3 and 2.4, as follows:

 **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

2.2 **Product Warnings**

Kester shall affix a warning to the Product label or otherwise directly on each Product provided for sale in retail outlets in California or sold via mail order catalog and/or the internet to customers located in California. The warning shall consist of either the Warning, or the Short-Form Warning described in subsection 2.1(a) or (b), respectively. 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 no smaller than the largest type size used for other consumer information on the product; if the short-form warning described in Section 2.1(b) is used, it shall be in at least 6-point type.

2.3 Mail Order Catalog Warnings

In the event that, after the Effective Date, Kester offers Products for sale to customers located in California through catalogs, Kester shall provide a warning for each Product both on the Product label in accordance with Section 2.2, and in the catalog 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 2.1(b) if the warning provided on the Product label also uses the Short-Form Warning content. Kester does not currently sell the Products through a catalogue nor via website, nor has a present intent to do so.

2.4 Internet Warnings

If, after the Effective Date, Kester sells Products via the internet to customers located in California, Kester shall provide warnings for each Product both on the Product label in accordance with Section 2.2, and by including either the warning or a clearly marked hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase. The internet warning may use the Short-Form Warning content described in Section 2.1(b) if the warning provided on the Product label also uses the Short-Form Warning content. Kester does not currently sell the Products through a catalogue nor via website, nor has a present intent to do so.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Kester agrees to pay a total of \$1,000 in civil penalties. The penalty payment will be allocated in accordance with California Health and Safety Code § 25249.12(c)(1) and (d), with 75% of the penalty amount paid to the California

Office of Environmental Health Hazard Assessment (OEHHA) and the remaining 25% of the penalty amount retained by Vinocur.

Kester will deliver its payment by overnight courier with a tracking number such that payment is received by plaintiff's counsel on or before December 28, 2018, in two checks made payable to: (a) "OEHHA" in the amount of \$750; and (b) "Laurence Vinocur, Client Trust Account" in the amount of \$250. Vinocur's counsel shall be responsible for delivering OEHHA's portion of the penalties paid under this Settlement Agreement.

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, Kester 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 through the mutual execution of this agreement, Kester shall reimburse Vinocur and his counsel \$9,200. Kester shall deliver its payment to the address in Section 3.3 by overnight courier with a tracking number such that payment is received by plaintiff's counsel on or before December 28, 2018, in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Vinocur investigating, bringing this matter to Kester's attention and negotiating a settlement of the matter.

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
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

4. CLAIMS COVERED AND RELEASED

4.1 Vinocur's Release of Kester

This Settlement Agreement is a full, final and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and Kester, 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 Kester, its parents (including Illinois Tool Works Inc), subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Kester directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, Releasees), based on their failure to warn about alleged exposures to lead contained in the Products that were manufactured, distributed, sold and/or offered for sale by Kester in California before 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, 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 lead in the Products, as alleged in the Notice, manufactured, distributed, sold and/or offered for sale by Kester, before the Effective Date (collectively, Claims), against Kester 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 Kester.

Nothing in this Section affects Vinocur's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Kester's Products.

4.2 Kester's Release of Vinocur

Kester, on behalf of itself, 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 (or those that could have been taken or made) by Vinocur and his attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter 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 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 Products, then Kester 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 Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Kester from any obligation to comply with any pertinent state or federal toxics control law.

7. NOTICE

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and: (i) personally delivered; (ii) sent by first-

class (registered or certified mail) return receipt requested; or (iii) sent by overnight courier, to one party by the other party at the following addresses:

For Kester:

Lik Wai Kho, Vice President
Kester LLC
155 Harlem Avenue
Glenview, IL 60025

With a Copy to:

Jeffrey Margulies
Norton Rose Fulbright US LLP
555 S. Flower St., 41st Floor
Los Angeles, CA 90071

For Vinocur:

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

Any party, from time to time, may 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 SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or 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 agrees to comply with the reporting requirements referenced in Health & Safety Code § 25249.7(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 and have read, understood and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 12/21/18

Date: _____

By: 
Laurence Vinocur

By: _____
Lik Wai Kho
Kester LLC

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement and have read, understood and agree to all of the terms and conditions contained herein.


AGREED TO:

AGREED TO:

Date: _____

Date: 23 December 2018

By: _____
Laurence Vinocur


By: Lik Wai Kho
Kester LLC