

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement (“**Settlement Agreement**”) is entered into by and between Laurence Vinocur (“**Vinocur**”) and defendant Laura Geller Beauty, LLC (“**Laura Geller**”), with Vinocur and Laura Geller collectively referred to as the “Parties” and individually as a “Party.”

1.2 Vinocur

Vinocur is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer and commercial products.

1.3 Laura Geller and Listed Chemical

Laura Geller manufactures, and/or distributes, and/or sells SPF Products, defined for purposes of this Settlement Agreement as sunscreen products, and products such as cosmetic foundation make up and other sun protection creams, gels, sticks and lotions. One ingredient used in such products to enhance their ability to provide protection from the sun is octocrylene, an active ingredient approved for use in sunscreens by the Federal Food & Drug Administration (“**FDA**”).¹ Octocrylene can at times contain benzophenone. Benzophenone (CAS # 119-61-9) is a chemical listed under The Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.* (commonly known as “**Proposition 65**”) as a chemical “known to the state to cause cancer” as Proposition 65 defines that phrase. 27 Cal. Code Reg. § 25000.

1.4 Products Covered

This Settlement Agreement covers and applies to all SPF Products, including but not limited to the categories described in Section 1.3, that are manufactured and/or distributed for sale in California and/or sold in California and that contain benzophenone. All sizes, types, brands, packaging, formulations, delivery forms (e.g., sprays or lotions applied by hand), intended uses (e.g., “faces,”

¹ See 76 Fed. Reg. 35620; 21 C.F.R. §§ 352.10, 352.20 (stayed).

“sport,” “moisturizing,” cosmetic purposes) are included. Laura Geller’s brands and examples of the product categories subject to this Settlement Agreement are set forth in the Exhibit A (“**Covered Products**”). The Parties agree that the Notice to Laura Geller covers all of Laura Geller’s Covered Products. This Settlement Agreement, and all of its terms, applies to all Covered Products, including without limitation new products and brands introduced, developed, or acquired in the future by Laura Geller which would today meet the definition of Covered Products if they currently were being manufactured or distributed for sale, or being sold, in California. The term Covered Product, as used hereafter in this Settlement Agreement, includes such future products and brands.

1.5 General Allegations

Vinocur alleges that Laura Geller manufactured, and/or distributed for sale in California, and/or sold in California, Covered Products containing benzophenone without “a clear and reasonable warning” as Proposition 65 defines that phrase, and continues to do so. Vinocur asserts this settlement is necessary to assure compliance with Proposition 65 now and in the future and to settle Vinocur’s alleged claims.

1.6 Notice of Violation

On June 3, 2015, Vinocur served Laura Geller and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging, in part, that Laura Geller was in violation of Proposition 65 for failing to warn consumers in California that its creams with sunscreen exposed users to benzophenone. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 No Admission

Laura Geller denies all the respective material, factual, and legal allegations contained in the Notice. Laura Geller maintains that all of its Covered Products have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission against interest by Laura Geller 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 against interest by Laura Geller of any

fact, finding, conclusion, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Laura Geller's obligations, responsibilities, and duties under this Settlement Agreement.

1.8 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date that this Settlement Agreement is signed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION STANDARD; NOTIFICATION

2.1 Octocrylene Reformulation Standard

(a) Whereas, Laura Geller, based on inquiry for purposes of this Settlement Agreement, has not identified any ingredient in its respective Covered Products other than octocrylene that is a source of detectable benzophenone in such Covered Products.

(b) As of June 1, 2017, Laura Geller shall only manufacture or cause to be manufactured, either Covered Products containing no more than (i) 35 ppm benzophenone in the finished Covered Product; or (ii) 350 ppm of benzophenone in the ingredient octocrylene used in the finished Covered Products. These standards are the "**Octocrylene Reformulation Standards.**"

(c) The Octocrylene Reformulation Standards shall apply to Covered Products which are manufactured by or on behalf of Laura Geller on or after June 1, 2017, the applicable Octocrylene Reformulation Standard date.

2.2. Notifications

Laura Geller shall provide, no later than December 30, 2016, written notice (the "**Octocrylene Supplier Letter**") to its current respective octocrylene supplier or suppliers, informing said supplier or suppliers of the Octocrylene Reformulation Standard and urging each supplier to use reasonable efforts to provide expeditiously only octocrylene which complies with the Octocrylene Reformulation Standard. Laura Geller shall not include statements in the Octocrylene Supplier Letter that will encourage a supplier to delay compliance with the Octocrylene Reformulation Standard.

2.3 Compliance with Octocrylene Reformulation Standard

(a) Laura Geller may, at its option, either (i) test the Covered Product pursuant to a scientifically appropriate application of U.S. Environmental Protection Agency testing methodologies

3580A, 8270C, or any other scientifically appropriate methodology for determining the benzophenone content in a substance of the form of the specific Covered Product being tested, or (ii) use the appropriate mathematical calculation based on octocrylene percentage in the Covered Product and the benzophenone concentration in the lot of octocrylene used in the finished Covered Product, based either on testing of the octocrylene lot or on a certificate of analysis documenting benzophenone content from the octocrylene supplier (the “**Certificate of Analysis**”) at its option. A responsible official with personal knowledge, after due inquiry, of Laura Geller shall provide Vinocur with a written certification confirming compliance with the above conditions on or before June 15, 2017.

(b) Laura Geller may, absent grounds to question the accuracy, demonstrate compliance with the Octocrylene Reformulation Standard by relying in good faith on an octocrylene supplier’s Certificate of Analysis or comparable verified quantitative benzophenone content information. Such good faith reliance establishes compliance with the Octocrylene Reformulation Standard. Octocrylene suppliers shall rely on any scientifically appropriate testing methodology for determining the benzophenone content of octocrylene.

(c) Laura Geller shall retain compliance documentation for three years after delivery of a lot of octocrylene and compliance documentation shall be made available within 30 days of a written request by Vinocur, who may make no more than two such requests annually.

3. MONETARY PAYMENTS

3.1 Civil Penalty

3.1.1 Initial Civil Penalty

Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred to in this Settlement Agreement, Laura Geller shall pay a total civil penalty in the amount of \$5,000 within five days of the Effective Date by issuing two separate checks payable as follows: (a) “OEHHA” in the amount of \$3,750; and (b) “Laurence Vinocur Client Trust Account” in the amount of \$1,250. The penalty payments shall be allocated according to Health and Safety Code section 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 paid to Vinocur. Vinocur’s counsel

shall be responsible for remitting Laura Geller's penalty payment(s) under this Settlement Agreement to OEHHA. Each penalty payment shall be remitted to the address indicated in Section 3.3 below.

3.1.2 Potential Additional Civil Penalty: Octocrylene Supplier Letter Content.

Laura Geller, if it does not include a statement in its Octocrylene Supplier Letter requesting that its supplier use commercially reasonable efforts to achieve an Octocrylene Reformulation Standard of 200 ppm by June 1, 2017, shall owe an additional \$10,000.00 in civil penalties, due within five (5) business days of the Effective Date, to be allocated and paid as set forth in Section 3.1 of this Settlement Agreement. Laura Geller shall remit a copy of its Octocrylene Supplier Letter to Vinocur no later than January 15, 2017, to the address provided in Section 3.3 below, in order for Vinocur to ascertain whether or not the \$10,000 penalty shall be waived.

3.2 Reimbursement of 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, Laura Geller expressed a desire to resolve Vinocur's fees and costs. Laura Geller agrees to pay Vinocur and his counsel under the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed through the mutual execution of this agreement, including without limitation the fees and costs incurred as a result of investigating, bringing this matter to Laura Geller's attention, negotiating a settlement, and reporting the same. Laura Geller agrees to pay the amount of fees and costs indicated on Exhibit A within five (5) business days of the Effective Date.

3.3 Payment Procedures

All payments under 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 Proposition 65 Claims

This Settlement Agreement is a full, final, and binding resolution between Vinocur, as an individual and *not* on behalf of the public, and Laura Geller of any violation of Proposition 65 that was or could have been asserted in the Notice, arising out of Laura Geller's alleged failure to provide Proposition 65 warnings for exposures to benzophenone in its Covered Products, by Vinocur on behalf of himself, his past and current agents, representatives, attorneys, successors and/or assignees, against Laura Geller, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Laura Geller directly or indirectly distributes or sells the Covered Products including, but not limited to, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensees and retailers, including Ulta Salon, Cosmetics & Fragrance, Inc. ("**Releasees**"), for violations arising under Proposition 65 for unwarned exposures to benzophenone from the Covered Products sold or distributed by Laura Geller prior to the Effective Date. Laura Geller's compliance with the terms of this Settlement Agreement shall be deemed to constitute compliance with Proposition 65 with respect to benzophenone in Covered Products sold or distributed by Laura Geller after the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur on behalf of himself as an individual and *not* on behalf of the public, his past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that he may have against Laura Geller and Releasees, including, without limitation, all actions, causes of action, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses including, but not limited to, investigation fees, expert fees, and attorneys' fees arising out of alleged or actual exposures to benzophenone in the Covered Products prior to the Effective Date.

4.2 Laura Geller's Release of Vinocur

Laura Geller, 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 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 Covered Products.

5. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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 as to the Covered Products, including without limitation the delisting of benzophenone, then Laura Geller may provide written notice to Vinocur of any asserted change in the law, and with the exception of Sections 3.1 and 3.2 above, have no further obligations pursuant to this Settlement Agreement, with respect to, and to the extent that, the Covered Products are so affected. None of the terms of this Settlement Agreement shall have any application to Covered Products sold outside of the State of California.

///

///

///

///

///

///

///

///

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: (i) personal delivery; (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier on any Party by the other at the following addresses:

To Laura Geller:

Matt Orr, Esq.
Call & Jensen
610 Newport Center Drive
Newport Beach, CA 92660

To Laurence 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 PDF 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. A facsimile or pdf signature shall be as valid as the original.

9. **COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

10. **MODIFICATION**

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

11. **ENFORCEMENT**

In order to assert a potential violation of the Settlement Agreement, Vinocur shall provide notice to Laura Geller as set forth in this paragraph (“**Notice of Breach**”): (a) Vinocur shall provide all results of testing conducted on a specific Covered Product during the three month period for which the violation is alleged; (b) such testing must be of no less than five (5) of the same Covered Product (irrespective of the volume size of the container) collected within the three (3) month period, from five different retail vendors; (c) the average of all test results for that period exceed the finished Product Octocrylene

Reformulation Standard; and (d) Vinocur shall provide Laura Geller a copy of (i) the purchase information for the allegedly violating Covered Product and (ii) a digital image of the allegedly violating Covered Product showing the SKU/UPC and, if present on the container, the Lot/Batch number(s).

Laura Geller and Vinocur shall, within thirty days of receipt of the Notice of Breach, meet and confer regarding the alleged violation, during which time Vinocur shall not file any motion, application, action, or pleading regarding the alleged violation.

For the first alleged violation as to any specific Covered Product for which Vinocur provides Notice of Breach, Laura Geller may demonstrate compliance by providing (1) a Certificate of Analysis or comparable verified quantitative benzophenone content information for five (5) units of the Covered Product or for the lot(s) of octocrylene from the supplier(s) of the octocrylene in the Covered Product at issue showing levels of benzophenone meeting the Octocrylene Reformulation Standard, or (2) a prior test result, using scientifically appropriate test methodologies, of the lot(s) of octocrylene used in the finished product which is the subject of the Notice of Breach, showing levels of benzophenone meeting the Octocrylene Reformulation Standard. If Laura Geller cannot demonstrate compliance, it must pay a stipulated civil penalty of \$25,000 to be allocated according to Section 3.1.

In the event that, thereafter, Vinocur provides a Notice of Breach pertaining to a second alleged violation for the same Covered Product, he must do so in accordance with this section. For the second alleged violation noticed by Vinocur of the same Covered Product, Laura Geller may demonstrate compliance with the terms of the Settlement Agreement by providing test results, using scientifically appropriate test methodologies, conducted on five (5) units of the Covered Product or on the first three (3) lots of octocrylene received more than 30 days after receipt of the written response showing compliance with the Octocrylene Reformulation Standard received from the supplier of the octocrylene used to make the finished product which was the subject of the first Notice of Breach, and used to manufacture that finished product. If fewer than three (3) lots are received during the relevant time period, testing is required only for such lots as were received. Such a showing shall constitute compliance.

In the event that Laura Geller cannot demonstrate compliance in the manner set forth above after receipt of a second Notice of Breach for the same Covered Product, and Vinocur thereafter provides notice in accordance with the provisions in this Section of a third alleged violation for the same Covered Product, Laura Geller shall pay a stipulated penalty of \$50,000 for each such second or subsequent violation.

12. 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.

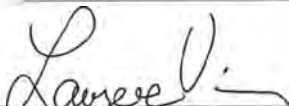
AGREED TO:

AGREED TO:

Date: 12/12/2016

Date: December 5, 2016

By:


Laurence Vinocur

By:


Laura Geller, President
LAURA GELLER BEAUTY, LLC

EXHIBIT A

I. Illustrative list of Brand Names of Products Manufactured or Distributed for sale in California, or sold in California by Laura Geller

Skin Elements Liquid Veil Foundation - SPF 25
CC Crème Foundation - SPF 25

II. Laura Geller's Required Settlement Payments

A. Initial Civil Penalty: \$5,000.00_____

C. Reimbursement of attorneys' fees and costs to The Chanler Group: \$26,000