

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Parties

This Settlement Agreement is entered into by and between Laurence Vinocur (“Vinocur”) and Melissa & Doug, LLC (“M&D”), with Vinocur and M&D 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. M&D 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 M&D manufactures, sells, and/or distributes for sale in California, tent/shelter fabrics that contain tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”). TDCPP is listed pursuant to Proposition 65 as a chemical known to cancer. Vinocur alleges that M&D failed to provide the health hazard warning required by Proposition 65 for exposures to TDCPP from the fabric of the tents/shelters that it sells in California.

### 1.3 Product Description

The products covered by this Settlement Agreement are tent/shelter fabrics containing TDCPP that are manufactured, sold and/or distributed for sale in California by M&D including, but not limited to, the fabric used in the *Melissa & Doug Sunny Patch Tootle Turtle Tent, #6202, H113290, UPC #0 00772 06202 2*. All such tents/shelters with fabrics containing TDCPP are referred to collectively hereinafter as the “Products.”

### 1.4 Notice of Violation

On October 24, 2014, Vinocur served M&D and the requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that M&D violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose

users to TDCPP. 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**

M&D 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 an admission by M&D 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 M&D of any fact, finding, conclusion, issue of law, or violation of law, the same being specifically denied by M&D. This Section shall not, however, diminish or otherwise affect M&D'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 June 5, 2015.

## **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

Commencing on September 1, 2015, and continuing thereafter, M&D shall only purchase for sale or manufacture for sale in California, (a) Reformulated Products; or (b) Products that are offered with a clear and reasonable warning pursuant to Section 2.2, below. For purposes of this Settlement Agreement, "Reformulated Products" are Products that contain no more than 25 parts per million (0.0025%) each of TDCPP, TCEP and/or tris(2, 3-dibromopropyl)phosphate ("TDBPP") when analyzed pursuant to Environmental Protection Agency testing methodologies 8545 and 8270C, or alternative methodologies used by state or federal agencies for determining TDCPP content in a solid substance.

### **2.2 Clear and Reasonable Warnings**

M&D agrees that as of the Effective Date, all Products it sells and/or distributes in California (except for Products already in the stream of commerce) which do not qualify as Reformulated Products, will bear a clear and reasonable warning pursuant to this Section. M&D

further agrees that the warning will be prominently placed with such conspicuousness when 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 use. For purposes of this Settlement Agreement, a clear and reasonable warning for the Products shall consist of a warning affixed to the packaging, label, tag, or directly to a Product sold in California and containing the following statement:

**WARNING:** This product contains TDCPP, a chemical known to the State of California to cause cancer.

### **3. MONETARY SETTLEMENT TERMS**

#### **3.1 Civil Penalty Payments**

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, M&D agrees to pay \$9,000 in civil penalties. Each penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% paid to Vinocur. Vinocur’s counsel shall be responsible for delivering OEHHA’s portion of any civil penalty payment made under this Settlement Agreement.

**3.1.1 Initial Civil Penalty.** Within five days of the Effective Date, M&D shall make an initial civil penalty payment of \$3,000. M&D agrees to provide its payment in a single check made payable to: “Laurence Vinocur, Client Trust Account” in the amount of \$3,000.

**3.1.2 Final Civil Penalty; Waiver for Accelerated Reformulation.** On January 16, 2016, M&D shall pay a final civil penalty of \$6,000. Pursuant to California Code of Regulations, title 11, section 3203(c), the final civil penalty payment will be waived in its entirety if, no later than January 4, 2016, an officer of M&D provides Vinocur’s counsel with written certification that it has reformulated all of the Products it purchases for sale, manufactures for sale, ships for sale, or distributes for sale in California such that it only offers,

and will only offer, Reformulated Products as defined by Section 2, above, for sale in California. The option to provide a written certification of accelerated reformulation in lieu of making the final civil penalty payment otherwise required by this Agreement is a material term, and time is of the essence.

### **3.2 Reimbursement of Vinocur's 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 section 1021.5 for all work performed in this matter. Under these legal principles, within five days of the Effective Date, M&D agrees to pay \$24,500 in the form of a check payable to "The Chanler Group" for all fees and costs incurred by Vinocur investigating, bringing this matter to the attention of M&D's management, and negotiating a settlement in the public interest.

### **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 M&D**

This Settlement Agreement is a full, final, and binding resolution between Vinocur and M&D, of any violation of Proposition 65 that was or could have been asserted by Vinocur, on his own behalf or on behalf of his past and current agents, representatives, attorneys, successors, and assignees, against M&D and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom M&D directly or indirectly distributes or sells Products including, but not limited to, downstream distributors, wholesalers, customers, retailers (including, without limitation, Toys 'R' Us, Inc.), franchisees, cooperative members, licensors, and licensees ("Releasees"), alleging a failure to warn about

exposures to TDCPP in Products that M&D sold or distributed for sale prior to the Effective Date.

In further consideration of the promises and agreements herein contained, Vinocur, on his own behalf and on behalf of his past and current agents, representatives, attorneys, successors, and assignees, hereby 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 the alleged or actual failure to warn about exposures to TDCPP, TCEP, and/or TDBPP from Products sold or distributed for sale by M&D 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 M&D's Release of Vinocur**

M&D, 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 (including those actions allegedly taken or made) by Vinocur and his attorneys and other representatives, whether in the course of investigating claims, 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, if any provision is deemed 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 is otherwise rendered inapplicable by reason of law generally or as to the Products, then M&D may provide written notice to Vinocur of the asserted change in the law, and shall have no further 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 notices 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 M&D:

Chris Myers  
Melissa & Doug, LLC  
P.O. Box 590  
Westport, CT 06881

For Vinocur:

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

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: 7/7/2015

By: 

LAURENCE VINO CUR

AGREED TO:

Date: 6/4/2015

By: 

Chris Meyers, Vice-President  
MELISSA & DOUG, LLC